

330. Parties may also file with the Commission some form of electronic media submission (e.g., diskettes, CDs, tapes, etc.) as part of their filings. In order to avoid possible adverse affects on such media submissions (potentially caused by irradiation techniques used to ensure that mail is not contaminated), the Commission advises that they should not be sent through the U.S. Postal Service. Hand-delivered or messenger-delivered electronic media submissions should be delivered to the Commission's contractor, Natek, Inc., at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002-4913. Electronic media sent by commercial overnight courier should be sent to the Commission's Secretary, Marlene H. Dortch, Federal Communications Commission, Office of the Secretary, 9300 East Hampton Drive, Capitol Heights, MD 20743.⁵³⁸

331. Regardless of whether parties choose to file electronically or by paper, they should also send one copy of any documents filed, either by paper or by e-mail, to each of the following: (1) Qualex International, Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C., 20554, facsimile (202) 863-2898, or e-mail at qualexint@aol.com; and (2) Paul Murray, Commercial Wireless Division, Wireless Telecommunications Bureau, 445 12th Street, S.W., Washington, D.C., 20554, or e-mail at Paul.Murray@fcc.gov.

332. *Availability of documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. These documents also will be available electronically at the Commission's Disabilities Issues Task Force web site, www.fcc.gov/dtf, and from the Commission's Electronic Comment Filing System. Documents are available electronically in ASCII text, Word 97, and Adobe Acrobat. Copies of filings in this proceeding may be obtained from Qualex International, Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C., 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail at qualexint@aol.com. This document is also available in alternative formats (computer diskette, large print, audio cassette, and Braille). Persons who need documents in such formats may contact Brian Millin at (202) 418-7426, TTY (202) 418-7365, Brian.Millin@fcc.gov, or send an e-mail to access@fcc.gov.

B. Ex Parte Presentations

333. This is a permit-but-disclose rulemaking proceeding, subject to the "permit-but-disclose" requirements under section 1.1206(b) of the Commission's rules.⁵³⁹ *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.⁵⁴⁰ Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules. Parties submitting written *ex parte* presentations or summaries of oral *ex parte* presentations are urged to use the ECFS in accordance with the Commission rules discussed above. Parties filing paper *ex parte* submissions must file an original and one copy of each submission with the Commission's Secretary, Marlene H. Dortch, at the appropriate address as shown above for filings sent by either U.S. mail, overnight delivery, or hand or messenger delivery. Parties must also serve the following with either one copy of each *ex parte* filing via e-mail or two paper copies: (1) Qualex International, Portals II, 445 12th

⁵³⁸ See "Reminder[:] Filing Locations for Paper Documents and Instructions for Mailing Electronic Media," *Public Notice*, DA 03-2730 (rel. Aug. 22, 2003).

⁵³⁹ 47 C.F.R. § 1.1206.

⁵⁴⁰ 47 C.F.R. § 1.1206(b)(2).

Street, S.W., Room CY-B402, Washington, D.C., 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or e-mail at qualexint@aol.com; and (2) Paul Murray, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, Washington, D.C., 20554, Paul.Murray@fcc.gov.

C. Final Regulatory Flexibility Analysis

334. Pursuant to the Regulatory Flexibility Act,⁵⁴¹ the Final Regulatory Flexibility Analysis (FRFA) for the Report and Order is set forth in Appendix C. The Commission's Consumer Information Bureau, Reference Information Center, will send a copy of the Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

D. Paperwork Reduction Act of 1995 Analysis

335. The Report and Order contains either a new or modified information collection. As part of our continuing effort to reduce paperwork burdens, we invite the public and other government agencies to take this opportunity to comment on the information collection contained in this Report and Order, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due sixty days from publication of a summary of the Report and Order in the Federal Register. Comments should address the following: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A copy of any comments on the information collections contained herein should be submitted to Judith B. Herman, Federal Communications Commission, 445 12th St., S.W., Room 1-C804, Washington, D.C. 20554, or via the Internet to Judith-B.Herman@fcc.gov, and to Edward C. Springer, OMB Desk Officer, 10236 New Executive Office Building, 724 17th St., N.W., Washington, D.C. 20503, or via the Internet to Edward.Springer@omb.eop.gov.

E. Initial Regulatory Flexibility Analysis

336. As required by the Regulatory Flexibility Act,⁵⁴² the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible impact on small entities of the proposals in the Further Notice of Proposed Rulemaking. The IRFA is set forth in Appendix D. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the Further Notice, and they must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the Further Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.⁵⁴³

F. Contact Information

337. The Wireless Telecommunications Bureau contact for this proceeding is Paul Murray at (202) 418-0688, Paul.Murray@fcc.gov. Press inquiries should be directed to Chelsea Fallon, Wireless

⁵⁴¹ 5 U.S.C. § 603.

⁵⁴² *Id.*

⁵⁴³ *Id.* § 603(a).

Telecommunications Bureau, at (202) 418-0654, TTY at (202) 418-7233, or e-mail at Chelsea.Fallon@fcc.gov.

VIII. ORDERING CLAUSES

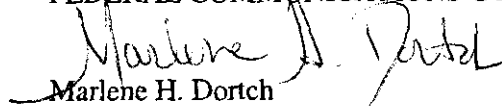
338. Pursuant to Sections 1, 4(i), 8, 9, 10, 301, 303(r), 308, 309, 310, 332, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 158, 161, 301, 303(r), 308, 309, 310, 332, and 503, IT IS ORDERED THAT this Report and Order and the policies set forth herein are ADOPTED and that Parts 1 and 27 of the Commission's rules, 47 C.F.R. Parts 1 and 27 are AMENDED as specified in Appendix B to establish policies and procedures to facilitate spectrum leasing arrangements under the policies enunciated in Section IV.A of the Report and Order, effective sixty days after publication in the Federal Register, and to streamline the processing of license assignment and transfer of control applications under the policies enunciated in Section IV.B of the Report and Order, effective April 5, 2004. The information collections contained in the rules applicable to spectrum leasing arrangements will become effective following OMB approval. The Commission will publish a document at a later date establishing the effective date of those rules.

339. IT IS FURTHER ORDERED THAT, pursuant to Section 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 5(c), the Wireless Telecommunications Bureau and the Office of the Managing Director ARE GRANTED DELEGATED AUTHORITY to implement the policies facilitating spectrum leasing as well as streamlining of application processing for license assignments and transfers of control, including, but not limited to, the development and implementation of the revised forms necessary to implement the policies adopted in this Report and Order and the rules set forth in Appendix B hereto.

340. IT IS FURTHER ORDERED THAT, pursuant to the authority contained in Sections 1, 4(i), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), and 303(r), the Further Notice of Proposed Rulemaking is hereby ADOPTED.

341. IT IS FURTHER ORDERED THAT the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of the Report and Order and the Further Notice of Proposed Rulemaking, including the Final Regulatory Flexibility Analysis and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION


Marlene H. Dortch
Secretary

APPENDIX A – COMMENTING PARTIES

(WT Docket No. 00-230)

A. Comments

Alaska Native Wireless, L.L.C. (Alaska Native Wireless)
American Mobile Telecommunications Association, Inc. (AMTA)
AT&T Wireless Services, Inc. (AT&T Wireless)
Blooston, Mordkofsky, Dickens, Duffy and Prendergast (Blooston Rural Carriers)
Cellular Telecommunications & Internet Association (CTIA)
Cinergy Corp. (Cinergy)
Cingular Wireless LLC (Cingular Wireless)
Cook Inlet Region, Inc. (Cook Inlet)
Direct Wireless Corporation (Direct Wireless)
El Paso Global Networks Company (El Paso Global)
Enron Corp (Enron)
Entergy Corporation (Entergy)
Home Box Office (HBO)
HYPRES, Inc. (HYPRES)
Kansas City Power & Light Company (Kansas City Power)
Land Mobile Communications Council (LMCC)
Long Lines, Ltd. (Long Lines)
Maritel, Inc. (Maritel)
National Telephone Cooperative Association (NTCA)
Nextel Communications, Inc. (Nextel)
Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)
Pacific Wireless Technologies, Inc. (Pacific Wireless)
Rural Cellular Association
Rural Telecommunications Group (RTG)
Satellite Industry Association (SIA)
Securicor Wireless Holdings, Inc. (Securicor)
Shared Spectrum Company (Shared Spectrum)
Software Defined Radio Forum (SDR Forum)
Sprint Corporation (Sprint)
Teledesic LLC (Teledesic)
Teligent, Inc. (Teligent)
U.S. Small Business Administration, Office of Advocacy (U.S. Small Business Administration)
UTStarcom, Inc. (UTStarcom)
Vanu, Inc. (Vanu)
Verizon Wireless
Winstar Communications, Inc. (Winstar)
37 Concerned Economists

B. Reply Comments

AT&T Wireless Services, Inc. (AT&T Wireless)
Blooston, Mordkofsky, Dickens, Duffy and Prendergast (Blooston Rural Carriers)
Cingular Wireless LLC (Cingular Wireless)
Dynergy Global Communications, Inc. (Dynergy)
El Paso Global Networks Company (El Paso Global)

Enron Corp (Enron)
Industrial Telecommunications Association, Inc. (ITA)
Leap Wireless International, Inc. (Leap Wireless)
Macquarie Bank Limited (Macquarie Bank)
MRFAC, Inc. (MRFAC)
New Skies Satellites N.V. (New Skies)
Nextel Communications, Inc. (Nextel)
PanAmSat Corporation and GE American Communications, Inc. (PanAmSat and GE Americom)
PowerLoom Corporation (PowerLoom)
Rural Telecommunications Group (RTG)
Satellite Industry Association (SIA)
Software Defined Radio Forum (SDR Forum)
TeleCorp PCS, Inc. (TeleCorp)
Teligent, Inc. (Teligent)
UTStarcom, Inc. (UTStarcom)
Winstar Communications, Inc. (Winstar)

APPENDIX B – FINAL RULES

For the reasons discussed above, the Federal Communications Commission amends title 47 of the Code of Federal Regulations, Parts 1 and 27, as follows:

PART 1 – PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

2. Amend § 1.913 by revising the section title and revising paragraphs (a), (a)(3), (b)(1) and (b)(2) to read as follows:

§ 1.913 Application and notification forms; electronic and manual filing.

(a) *Application and notification forms.* Applicants, licensees, and spectrum lessees (*see* § 1.9003 of this part) shall use the following forms and associated schedules for all applications and notifications:

- (1) * * *

* * * * *

(3) *FCC Form 603, Application for Assignment of Authorization or Transfer of Control; Notification or Application for Spectrum Leasing Arrangement.* FCC Form 603 is used by applicants and licensees to apply for Commission consent to assignments of existing authorizations, to apply for Commission consent to transfer control of entities holding authorizations, to notify the Commission of the consummation of assignments or transfers, and to request extensions of time for consummation of assignments or transfers. It is also used for Commission consent to partial assignments of authorization, including partitioning and disaggregation. In addition, it is used by licensees and spectrum lessees (*see* § 1.9003 of this part) to notify the Commission regarding spectrum manager leasing arrangements and to apply for Commission consent for *de facto* transfer leasing arrangements pursuant to the rules set forth in subpart X of this part (*see* subpart X of this part).

- (4) * * *

- (b) * * *

(1) Attachments to applications and notifications should be uploaded along with the electronically filed applications and notifications whenever possible. The files * * * .

(2) Any associated documents submitted with an application or notification must be uploaded as attachments to the application or notification whenever possible. The attachment should be uploaded via ULS in Adobe Acrobat Portable Document Format (PDF) whenever possible.

* * * * *

3. Amend § 1.948 by adding new subsection (j) to read as follows:

§ 1.948 Assignment of authorization or transfer of control, notification of consummation.

(a) * * *

* * * * *

(j) *Streamlined processing for certain applications.* Applications for assignment of authorizations or transfer of control relating to the Wireless Radio Services identified in this subsection will be processed pursuant to streamlined approval procedures, as discussed herein.

(1) *Services eligible for streamlined processing.* Applications for assignment of authorizations or transfers of control relating to the following services are subject to the streamlined approval processes, as set forth in this subsection:

- (i) the Paging and Radiotelephone Service (Part 22 of this chapter);
- (ii) the Rural Radiotelephone Service (Part 22 of this chapter);
- (iii) the Air-Ground Radiotelephone Service (Part 22 of this chapter);
- (iv) the Cellular Radiotelephone Service (Part 22 of this chapter);
- (v) the Offshore Radiotelephone Service (Part 22 of this chapter);
- (vi) the narrowband Personal Communications Service (Part 24 of this chapter);
- (vii) the broadband Personal Communications Service (Part 24 of this chapter);
- (viii) the Wireless Communications Service in the 698-746 MHz band (Part 27 of this chapter);
- (ix) the Wireless Communications Service in the 746-764 MHz and 776-794 MHz bands (Part 27 of this chapter);
- (x) the Wireless Communications Service in the 1390-1392 MHz band (Part 27 of this chapter);
- (xi) the Wireless Communications Service in the paired 1392-1395 MHz and 1432-1435 MHz bands (Part 27 of this chapter);
- (xii) the Wireless Communications Service in the 1670-1675 MHz band (Part 27 of this chapter);
- (xiii) the Wireless Communications Service in the 2305-2320 and 2345-2360 MHz bands (Part 27 of this chapter);
- (xiv) the Wireless Communications Service in the 2385-2390 MHz band (Part 27 of this chapter);
- (xv) the VHF Public Coast Station service (Part 80 of this chapter);
- (xvi) the 220 MHz Service (excluding public safety licensees) (Part 90 of this chapter);

(xvii) the Specialized Mobile Radio Service in the 800 MHz and 900 MHz bands (including exclusive use SMR licenses in the General Category channels) (Part 90 of this chapter);

(xviii) the Location and Monitoring Service (LMS) with regard to licenses for multilateration LMS systems (Part 90 of this chapter);

(xix) paging operations under Part 90 of this chapter;

(xx) the Business and Industrial/Land Transportation channels (Part 90 of this chapter);

(xxi) the 218-219 MHz band (Part 95 of this chapter);

(xxii) the Local Multipoint Distribution Service (Part 101 of this chapter);

(xxiii) the 24 GHz Band (Part 101 of this chapter);

(xxiv) the 39 GHz Band (Part 101 of this chapter);

(xxv) the Multiple Address Systems band (Part 101 of this chapter);

(xxvi) the Local Television Transmission Service (Part 101 of this chapter);

(xxvii) the Private-Operational Fixed Point-to-Point Microwave Service (Part 101 of this chapter); and,

(xxviii) the Common Carrier Fixed Point-to-Point Microwave Service (Part 101 of this chapter).

(2) *Streamlined approval procedures.* (i) Applications, if sufficiently complete and the required application fee has been paid (*see* § 1.1102 of this part), will be accepted for filing and will be placed on public notice, except no prior public notice will be required for applications involving authorizations in the Private Wireless Services, as specified in § 1.933(d)(9) of this part.

(ii) Petitions to deny filed in accordance with § 309(d) of the Communications Act must comply with the provisions of § 1.939 of this part, except that such petitions must be filed no later than 14 days following the date of the Public Notice listing the application as accepted for filing.

(iii) No later than 21 days following the date of the Public Notice listing an application as accepted for filing, the Wireless Telecommunications Bureau (Bureau) will affirmatively consent to the application, deny the application, or remove the application from streamlined processing for further review. For applications for which no prior public notice is required, the Bureau will affirmatively consent to the application, deny the application, or remove the application from streamlined processing for further review no later than 21 days following the date on which the application has been filed and any required application fee has been paid (*see* § 1.1102 of this part).

(iv) Grant of consent to an application will be reflected in a Public Notice (*see* § 1.933(a) of this part) promptly issued after the grant.

(v) If the Bureau determines to remove an application from streamlined processing, it will issue a Public Notice indicating that the application has been removed from streamlined processing. Within 90 days of the date of that Public Notice, the Bureau will either take action upon the application or provide Public Notice that an additional 90-day period for review is needed.

(vi) Consent to the application is not deemed granted until the Bureau affirmatively acts upon the application.

(vii) If any petition to deny is filed, and the Bureau grants the application, the Bureau will deny the petition(s) and issue a concise statement of the reason(s) for denial, disposing of all substantive issues raised in the petition(s).

4. Amend § 1.2002 to add a new subsection 1.2002(d) to read as follows:

§ 1.2002 Applicants required to submit information.

(a) ***

(d) The provisions of paragraphs (a) and (b) of this section are applicable to spectrum lessees (*see* § 1.9003 of this part) engaged in spectrum manager leasing arrangements and *de facto* transfer leasing arrangements pursuant to the rules set forth in subpart X of this part.

5. Amend § 1.2003 by revising it to read as follows:

§ 1.2003 Applications affected.

The certification required by § 1.2002 must be filed with the following applications and any other requests for authorization filed with the Commission, as well as for spectrum leasing notifications and spectrum leasing applications (*see* subpart X of this part), regardless of whether a specific form exists.

FCC 301 ***

FCC 603 Wireless Telecommunications Bureau Application for Assignment of Authorization and Transfer of Control; Notification or Application for Spectrum Leasing Arrangement;

FCC 605 ***

6. Amend § 1.8002 by adding a new subsection 1.8002(a)(6) to read as follows:

§ 1.8002 Obtaining an FRN.

(a) ***

(1) ***

(6) Anyone entering into a spectrum leasing arrangement as a spectrum lessee (*see* subpart X of this part).

* * * * *

7. Add the following new subpart X to Part 1, to read as follows:

Subpart X – Spectrum Leasing

SCOPE AND AUTHORITY

§ 1.9001 Purpose and scope.

(a) The purpose of part 1, subpart X is to implement policies and rules pertaining to spectrum leasing arrangements between licensees in the services identified in this subpart and spectrum lessees. These spectrum leasing policies and rules also implicate other Commission rule parts, including parts 1, 2, 20, 22, 24, 26, 27, 80, 90, 95, and 101 of Title 47, Chapter I of the Code of Federal Regulations.

(b) Licensees holding exclusive use rights are permitted to engage in spectrum leasing whether their operations are characterized as commercial, common carrier, private, or non-common carrier.

§ 1.9003 Definitions.

De facto transfer leasing arrangement. A spectrum leasing arrangement in which a licensee retains *de jure* control of its license while transferring *de facto* control of the leased spectrum to a spectrum lessee, pursuant to the spectrum leasing rules set forth in this subpart.

FCC Form 603. FCC Form 603 is the form to be used by licensees and spectrum lessees that enter into spectrum leasing arrangements pursuant to the rules set forth in this subpart. Parties are required to submit this form electronically when entering into spectrum leasing arrangements under this subpart, except that licensees falling within the provisions of § 1.911(d) of this part may file the notification either electronically or manually.

Long-term de facto transfer leasing arrangement. A long-term *de facto* transfer leasing arrangement is a *de facto* transfer leasing arrangement that has an individual term, or series of combined terms, of more than 360 days.

Short-term de facto transfer leasing arrangement. A short-term *de facto* transfer leasing arrangement is a *de facto* transfer leasing arrangement that has an individual or combined term of not longer than 360 days.

Spectrum leasing application. The application submitted to the Commission by a licensee and a spectrum lessee seeking approval of a *de facto* transfer leasing arrangement.

Spectrum leasing arrangement. An arrangement between a licensed entity and a third-party entity in which the licensee leases certain of its spectrum usage rights in the licensed spectrum to the third-party entity, the spectrum lessee, pursuant to the rules set forth in this subpart. The arrangement may involve the leasing of any amount of licensed spectrum, in any geographic area or site encompassed by the license, for any period of time during the term of the license authorization. Two different types of spectrum leasing arrangements, spectrum manager leasing arrangements and *de facto* transfer leasing arrangements, are permitted under this subpart.

Spectrum leasing notification. The required notification submitted by a licensee to the Commission regarding a spectrum manager leasing arrangement.

Spectrum lessee. A third-party entity that leases certain spectrum usage rights from a licensee pursuant to the spectrum leasing rules set forth in this subpart.

Spectrum manager leasing arrangement. A spectrum leasing arrangement in which a licensee retains both *de jure* control of its license and *de facto* control of the leased spectrum that it leases to a spectrum lessee, pursuant to the spectrum leasing rules set forth in this subpart.

§ 1.9005 Included services.

The spectrum leasing policies and rules of this subpart apply to the following services in the Wireless Radio Services in which commercial or private licensees hold exclusive use rights:

- (a) the Paging and Radiotelephone Service (Part 22 of this chapter);
- (b) the Rural Radiotelephone Service (Part 22 of this chapter);
- (c) the Air-Ground Radiotelephone Service (Part 22 of this chapter);
- (d) the Cellular Radiotelephone Service (Part 22 of this chapter);
- (e) the Offshore Radiotelephone Service (Part 22 of this chapter);
- (f) the narrowband Personal Communications Service (Part 24 of this chapter);
- (g) the broadband Personal Communications Service (Part 24 of this chapter);
- (h) the Wireless Communications Service in the 698-746 MHz band (Part 27 of this chapter);
- (i) the Wireless Communications Service in the 746-764 MHz and 776-794 MHz bands (Part 27 of this chapter);
- (j) the Wireless Communications Service in the 1390-1392 MHz band (Part 27 of this chapter);
- (k) the Wireless Communications Service in the paired 1392-1395 MHz and 1432-1435 MHz bands (Part 27 of this chapter);
- (l) the Wireless Communications Service in the 1670-1675 MHz band (Part 27 of this chapter);
- (m) the Wireless Communications Service in the 2305-2320 and 2345-2360 MHz bands (Part 27 of this chapter);
- (n) the Wireless Communications Service in the 2385-2390 MHz band (Part 27 of this chapter);
- (o) the VHF Public Coast Station service (Part 80 of this chapter);
- (p) the 220 MHz Service (excluding public safety licensees) (Part 90 of this chapter);
- (q) the Specialized Mobile Radio Service in the 800 MHz and 900 MHz bands (including exclusive use SMR licenses in the General Category channels) (Part 90 of this chapter);
- (r) the Location and Monitoring Service (LMS) with regard to licenses for multilateration LMS systems (Part 90 of this chapter);
- (s) paging operations under Part 90 of this chapter;
- (t) the Business and Industrial/Land Transportation (B/ILT) channels (Part 90 of this chapter) (including all B/ILT channels above 512 MHz and those in the 470-512 MHz band where a licensee has achieved exclusivity, but excluding B/ILT channels in the 470-512 MHz band where a licensee has not

achieved exclusivity and those channels below 470 MHz, including those licensed pursuant to 47 C.F.R. § 90.187(b)(2)(v));

- (u) the 218-219 MHz band (Part 95 of this chapter);
- (v) the Local Multipoint Distribution Service (Part 101 of this chapter);
- (w) the 24 GHz Band (Part 101 of this chapter);
- (x) the 39 GHz Band (Part 101 of this chapter);
- (y) the Multiple Address Systems band (Part 101 of this chapter);
- (z) the Local Television Transmission Service (Part 101 of this chapter);
- (aa) the Private-Operational Fixed Point-to-Point Microwave Service (Part 101 of this chapter);

and,

- (bb) the Common Carrier Fixed Point-to-Point Microwave Service (Part 101 of this chapter).

GENERAL POLICIES AND PROCEDURES

§ 1.9010 De facto control standard for spectrum leasing arrangements.

(a) Under the rules established for spectrum leasing arrangements in this subpart, the following standard is applied for purposes of determining whether a licensee retains *de facto* control under § 310(d) of the Communications Act with regard to spectrum that it leases to a spectrum lessee.

(b) A licensee will be deemed to have retained *de facto* control of leased spectrum if it enters into a spectrum leasing arrangement and acts as a spectrum manager with regard to portions of the licensed spectrum that it leases to a spectrum lessee, provided the licensee satisfies the following two conditions:

(1) *Licensee responsibility for lessee compliance with Commission policies and rules.* The licensee must remain fully responsible for ensuring the spectrum lessee's compliance with the Communications Act and all applicable policies and rules directly related to the use of the leased spectrum, as set forth below:

(i) Through contractual provisions and actual oversight and enforcement of such provisions, the licensee must act in a manner sufficient to ensure that the spectrum lessee operates in conformance with applicable technical and use rules governing the license authorization.

(ii) The licensee must maintain a reasonable degree of actual working knowledge about the spectrum lessee's activities and facilities that affect its ongoing compliance with the Commission's policies and rules. These responsibilities include: coordinating operations and modifications of the spectrum lessee's system to ensure compliance with Commission rules regarding non-interference with co-channel and adjacent channel licensees (and any authorized spectrum user); making all determinations as to whether an application is required for any individual spectrum lessee stations (*e.g.*, those that require frequency coordination, submission of an Environmental Assessment under § 1.1307 of this part, those that require international or Interdepartment Radio Advisory Committee (IRAC) coordination, those that affect radio frequency quiet zones described in § 1.924 of this part, or those that require notification to the Federal Aviation Administration under Part 17 of this chapter); and, ensuring that the spectrum lessee complies with the Commission's safety guidelines relating to human exposure to radiofrequency (RF) radiation (*e.g.*, § 1.1307(b) and related rules of this part). The licensee is responsible for resolving all

interference-related matters, including conflicts between its spectrum lessee and any other spectrum lessee or licensee (or authorized spectrum user). The licensee may use agents (e.g., counsel, engineering consultants) when carrying out these responsibilities, so long as the licensee exercises effective control over its agents' actions.

(iii) The licensee must be able to inspect the spectrum lessee's operations and must retain the right to terminate the spectrum leasing arrangement in the event the spectrum lessee fails to comply with the terms of the arrangement and/or applicable Commission requirements. If the licensee or the Commission determines that there is any violation of the Commission's rules or that the spectrum lessee's system is causing harmful interference, the licensee must immediately take steps to remedy the violation, resolve the interference, suspend or terminate the operation of the system, or take other measures to prevent further harmful interference until the situation can be remedied. If the spectrum lessee refuses to resolve the interference, remedy the violation, or suspend or terminate operations, either at the direction of the licensee or by order of the Commission, the licensee must use all legal means necessary to enforce compliance.

(2) *Licensee responsibility for interactions with the Commission, including all filings, required under the license authorization and applicable service rules directly related to the leased spectrum.* The licensee remains responsible for the following interactions with the Commission:

(i) The licensee must file the necessary notification with the Commission, as required under § 1.9020(d) of this subpart.

(ii) The licensee is responsible for making all required filings (e.g., applications, notifications, correspondence) associated with the license authorization that are directly affected by the spectrum lessee's use of the licensed spectrum. The licensee may use agents (e.g., counsel, engineering consultants) to complete these filings, so long as the licensee exercises effective control over its agents' actions and complies with any signature requirements for such filings.

§ 1.9020 Spectrum manager leasing arrangements.

(a) *Overview.* Under the provisions of this section, a licensee (in any of the included services) and a spectrum lessee may enter into a spectrum manager leasing arrangement, without the need for prior Commission approval, provided that the licensee retains *de jure* control of the license and *de facto* control, as defined and explained in this subpart, of the leased spectrum. The licensee must notify the Commission of the spectrum leasing arrangement pursuant to the rules set forth in this section.

(b) *Rights and responsibilities of the licensee.* (1) The licensee is directly and primarily responsible for ensuring the spectrum lessee's compliance with the Communications Act and applicable Commission policies and rules.

(2) The licensee retains responsibility for maintaining its compliance with applicable eligibility and ownership requirements imposed on it pursuant to the license authorization.

(3) The licensee must retain a copy of the spectrum leasing agreement and make it available upon request by the Commission.

(c) *Rights and responsibilities of the spectrum lessee.* (1) The spectrum lessee must comply with the Communications Act and with Commission requirements associated with the license.

(2) The spectrum lessee is responsible for establishing that it meets the eligibility and qualification requirements applicable to spectrum lessees under the rules set forth in this section.

(3) The spectrum lessee must comply with any obligations that apply directly to it as a result of its own status as a service provider (*e.g.*, Title II obligations if the spectrum lessee acts as a telecommunications carrier or acts as a common carrier).

(4) In addition to the licensee being directly accountable to the Commission for ensuring the spectrum lessee's compliance with the Commission's operational rules and policies (as discussed in this subpart), the spectrum lessee is independently accountable to the Commission for complying with the Communications Act and Commission policies and rules, including those that apply directly to the spectrum lessee as a result of its own status as a service provider.

(5) In leasing spectrum from a licensee, the spectrum lessee must accept Commission oversight and enforcement consistent with the license authorization. The spectrum lessee must cooperate fully with any investigation or inquiry conducted by either the Commission or the licensee, allow the Commission or the licensee to conduct on-site inspections of transmission facilities, and suspend operations at the direction of the Commission or the licensee and to the extent that such suspension would be consistent with the Commission's suspension policies.

(6) The spectrum lessee must retain a copy of the spectrum leasing agreement and make it available upon request by the Commission.

(d) *Applicability of particular service rules and policies.* Under a spectrum manager leasing arrangement, the service rules and policies apply in the following manner to the licensee and spectrum lessee:

(1) *Interference-related rules.* The interference and radiofrequency (RF) safety rules applicable to use of the spectrum by the licensee as a condition of its license authorization also apply to the use of the spectrum leased by the spectrum lessee.

(2) *General eligibility rules.* (i) The spectrum lessee must meet the same eligibility and qualification requirements that are applicable to the licensee under its license authorization.

(ii) The spectrum lessee must meet applicable foreign ownership eligibility requirements (*see* §§ 310(a), 310(b) of the Communications Act).

(iii) The spectrum lessee must satisfy any qualification requirements, including character qualifications, applicable to the licensee under its license authorization.

(iv) The spectrum lessee must not be a person subject to the denial of Federal benefits under the Anti-Drug Abuse Act of 1988 (*see* § 1.2001 *et seq.* of this part).

(v) The licensee may reasonably rely on the spectrum lessee's certifications that it meets the requisite eligibility and qualification requirements contained in the notification required by this section.

(3) *Use restrictions.* To the extent that the licensee is restricted from using the licensed spectrum to offer particular services under its license authorization, the use restrictions apply to the spectrum lessee as well.

(4) *Designated entity/entrepreneur rules.* A licensee that holds a license pursuant to small business and/or entrepreneur provisions (*see* § 1.2110 of this part and § 24.709 of this chapter) and continues to be subject to unjust enrichment requirements (*see* § 1.2111 of this part and § 24.714 of this chapter) and/or transfer restrictions (*see* § 24.839 of this chapter) may enter into a spectrum manager leasing arrangement with a spectrum lessee so long as doing so does not result in the spectrum lessee becoming a "controlling interest" (*see* § 1.2110(c)(2) of this part) or affiliate (*see* § 1.2110(c)(5) of this part) of the licensee such that the licensee would lose its eligibility as a small business or entrepreneur.

To the extent there is any conflict between the revised *de facto* control standard for spectrum leasing arrangements, as set forth in this subpart, and the definition of controlling interest (including its *de facto* control standard) set forth in section 1.2110 of this part, the latter definition governs for determining whether the licensee has maintained the requisite degree of ownership and control to allow it to remain eligible for the license or for other benefits such as bidding credits and installment payments.

(5) *Construction/performance requirements.* Any performance or build-out requirement applicable under a license authorization (e.g., a requirement that the licensee construct and operate one or more specific facilities, cover a certain percentage of geographic area, cover a certain percentage of population, or provide substantial service) always remains a condition of the license, and legal responsibility for meeting such obligation is not delegable to the spectrum lessee(s).

(i) The licensee may attribute to itself the build-out or performance activities of its spectrum lessee(s) for purposes of complying with any applicable performance or build-out requirement.

(ii) If a licensee relies on the activities of a spectrum lessee to meet the licensee's performance or build-out obligation, and the spectrum lessee fails to engage in those activities, the Commission will enforce the applicable performance or build-out requirements against the licensee, consistent with the applicable rules.

(iii) If there are rules applicable to the license concerning the discontinuance of operation, the licensee is accountable for any such discontinuance and the rules will be enforced against the licensee regardless of whether the licensee was relying on the activities of a lessee to meet particular performance requirements.

(6) *Cellular cross-interest rule.* The cellular cross-interest rule applies to spectrum manager leasing arrangements involving a cellular authorization in a Rural Service Area (RSA), and leased cellular spectrum is attributable to the spectrum lessee pursuant to § 22.942 of this chapter (*see* §§ 22.942, 22.909 of this chapter).

(7) *Regulatory classification.* If the regulatory status of the licensee (e.g., common carrier or non-common carrier status) is prescribed by rule, the regulatory status of the spectrum lessee is prescribed in the same manner, except that § 20.9(a) of this chapter shall not preclude a licensee in the services covered by that rule from entering into a spectrum leasing arrangement with a spectrum lessee that chooses to operate on a Private Mobile Radio Service (PMRS), private, or non-commercial basis.

(8) *Regulatory fees.* The licensee remains responsible for payment of the required regulatory fees that must be paid in advance of its license term (*see* § 1.1152 of this part). Where, however, regulatory fees are paid annually on a per-unit basis (such as for Commercial Mobile Radio Services (CMRS) pursuant to § 1.1152 of this part), the licensee and spectrum lessee are each required to pay fees for those units associated with its respective operations.

(9) *E911 requirements.* If E911 obligations apply to the licensee (*see* § 20.18 of this chapter), the licensee retains the obligations with respect to leased spectrum.

(e) *Notification regarding the spectrum manager leasing arrangement.* A licensee that enters into a spectrum manager leasing arrangement must notify the Commission of that arrangement in advance of operation, as set forth herein.

(1) *Notification procedures.* (i) The licensee must submit the notification to the Commission by electronic filing, except that licensees falling within the provisions of § 1.911(d) of this part may file the notification either electronically or manually. Except as provided in paragraph (ii) herein, such notification must be submitted within 14 days of execution of the spectrum leasing arrangement and at least 21 days in advance of commencing operations.

(ii) For spectrum manager leasing arrangements of one year or less, the licensee must provide notification to the Commission within 14 days of execution of the spectrum leasing arrangement and at least ten (10) days in advance of operation. If the licensee and spectrum lessee seek to extend this leasing arrangement for an additional term beyond the initial term, the licensee must provide the Commission with notification of the new spectrum leasing arrangement at least 21 days in advance of operation under the extended term.

(2) *Application fees.* There are no application fees required for the filing of a spectrum manager leasing notification.

(3) *Public notice of notifications.* Notifications under this subpart will be placed on an informational public notice on a weekly basis (see § 1.933(a) of this part).

(4) *Contents of notification.* The notification must contain all information requested on the applicable form, FCC Form 603, and any additional information and certifications required by the rules in this chapter and any rules pertaining to the specific service for which the notification is filed.

(5) *Effective date of a spectrum manager leasing arrangement.* The spectrum manager leasing arrangement will be deemed effective in the Commission's records, and for purposes of the application of the rules set forth in this section, as of the beginning date of the term as specified in the spectrum leasing notification.

(f) *Commission termination of a spectrum manager leasing arrangement.* The Commission retains the right to investigate and terminate any spectrum manager leasing arrangement if it determines, post-notification, that the arrangement constitutes an unauthorized transfer of *de facto* control of the leased spectrum, is otherwise in violation of the rules in this chapter, or raises foreign ownership, competitive, or other public interest concerns. Information concerning any such termination will be placed on public notice.

(g) *Expiration, extension, or termination of a spectrum leasing arrangement.* (1) Absent Commission termination or except as provided in paragraph (2) or (3) herein, a spectrum leasing arrangement entered into pursuant to this section will expire on the termination date set forth in the spectrum leasing notification.

(2) A spectrum leasing arrangement may be extended beyond the initial term set forth in the spectrum leasing notification provided that the licensee notifies the Commission of the extension within 14 days of execution of the extension and at least 21 days in advance of operation under the extended term.

(3) If a spectrum leasing arrangement is terminated earlier than the termination date set forth in the notification, either by the licensee or by the parties' mutual agreement, the licensee must file a notification with the Commission, no later than ten (10) days after the early termination, indicating the date of the termination. If the parties fail to put the spectrum leasing arrangement into effect, they must so notify the Commission consistent with the provisions of this section.

(4) The Commission will place information concerning an extension or an early termination of a spectrum leasing arrangement on public notice.

(h) *Assignment of a spectrum leasing arrangement.* The spectrum lessee may assign its spectrum leasing arrangement to another entity provided that the licensee has agreed to such an assignment, is in privity with the assignee, and notifies the Commission at least 21 days before the consummation of the assignment, pursuant to the notification procedures set forth in this section. In the case of a *pro forma* assignment, the licensee may file the notification regarding the action subject to the rules and procedures regarding *pro forma* transactions applicable to licensees set forth in § 1.948(c)(1) of

this part. The Commission will place information concerning a notification related to an assignment, whether substantial or *pro forma*, on public notice.

(i) *Transfer of control of a spectrum lessee.* The licensee must notify the Commission of any transfer of control of a spectrum lessee at least 21 days before the consummation of the transfer of control, pursuant to the notification procedures of this section. In the case of a *pro forma* transfer of control of the spectrum lessee, the licensee may file the notification regarding the action subject to the same rules and procedures regarding *pro forma* transactions applicable to licensees set forth in § 1.948(c)(1) of this part. The Commission will place information concerning a notification related to a transfer of control, whether substantial or *pro forma*, on public notice.

(j) *Revocation or automatic cancellation of a license or a spectrum lessee's operating authority.* (1) In the event an authorization held by a licensee that has entered into a spectrum leasing arrangement is revoked or cancelled, the spectrum lessee will be required to terminate its operations no later than the date on which the licensee ceases to have any authority to operate under the license, except as provided in paragraph (2) of this subsection.

(2) In the event of a license revocation or cancellation, the Commission will consider a request by the spectrum lessee for special temporary authority (*see* § 1.931 of this part) to provide the spectrum lessee with an opportunity to transition its users in order to minimize service disruption to business and other activities.

(3) In the event of a license revocation or cancellation, and the required termination of the spectrum lessee's operations, the former spectrum lessee does not, as a result of its former status, receive any preference over any other party should the spectrum lessee seek to obtain the revoked or cancelled license.

(k) *Subleasing.* A spectrum lessee may sublease the leased spectrum usage rights subject to the licensee's consent and the licensee's establishment of privity with the spectrum sublessee. The licensee must submit a notification regarding the spectrum subleasing arrangement in accordance with the notification procedures set forth in this section.

(l) *Renewal.* A licensee and spectrum lessee that have entered into a spectrum leasing arrangement whose term continues to the end of the current term of the license authorization may, contingent on the Commission's grant of the license renewal, extend the spectrum leasing arrangement during the term of the renewed license authorization. The licensee must notify the Commission of such an extension of the spectrum leasing arrangement on the same application it submits for license renewal (*see* § 1.949 of this part).

§ 1.9030 Long-term *de facto* transfer leasing arrangements.

(a) *Overview.* Under the provisions of this section, a licensee (in any of the included services) and a spectrum lessee may enter into a long-term *de facto* transfer leasing arrangement in which the licensee retains *de jure* control of the license while *de facto* control of the leased spectrum is transferred to the spectrum lessee for the duration of the spectrum leasing arrangement, subject to prior Commission consent pursuant to the application procedures set forth in this section. A "long-term" *de facto* transfer leasing arrangement has an individual term, or series of combined terms, of more than 360 days.

(b) *Rights and responsibilities of the licensee.* (1) Except as provided in paragraph (2) herein, the licensee is relieved of primary and direct responsibility for ensuring that the spectrum lessee's operations comply with the Communications Act and Commission policies and rules.

(2) The licensee is responsible for its own violations, including those related to its spectrum leasing arrangement with the spectrum lessee, and for ongoing violations or other egregious behavior on the part of the spectrum lessee about which the licensee has knowledge or should have knowledge.

(3) The licensee must retain a copy of the spectrum leasing agreement and make it available upon request by the Commission.

(c) *Rights and responsibilities of the spectrum lessee.* (1) The spectrum lessee assumes primary responsibility for complying with the Communications Act and applicable Commission policies and rules.

(2) The spectrum lessee is granted an instrument of authorization pertaining to the *de facto* transfer leasing arrangement that brings it within the scope of the Commission's direct forfeiture provisions under § 503(b) of the Communications Act.

(3) The spectrum lessee is responsible for interacting with the Commission regarding the leased spectrum and for making all related filings (e.g., all applications and notifications, submissions of any materials required to support a required Environmental Assessment, any reports required by Commission rules and applicable to the lessee, information necessary to facilitate international or Interdepartment Radio Advisory Committee (IRAC) coordination).

(4) The spectrum lessee is required to maintain accurate information on file pursuant to Commission rules (see § 1.65 of this part).

(5) The spectrum lessee must retain a copy of the spectrum leasing agreement and make it available upon request by the Commission.

(d) *Applicability of particular service rules and policies.* Under a long-term *de facto* transfer leasing arrangement, the service rules and policies apply in the following manner to the licensee and spectrum lessee:

(1) *Interference-related rules.* The interference and radiofrequency (RF) safety rules applicable to use of the spectrum by the licensee as a condition of its license authorization also apply to the use of the spectrum leased by the spectrum lessee.

(2) *General eligibility rules.* (i) The spectrum lessee must meet the same eligibility and qualification requirements that are applicable to the licensee under its license authorization.

(ii) The spectrum lessee must meet applicable foreign ownership eligibility requirements (see §§ 310(a), 310(b) of the Communications Act).

(iii) The spectrum lessee must satisfy any qualification requirements, including character qualifications, applicable to the licensee under its license authorization.

(iv) The spectrum lessee must not be a person subject to denial of Federal benefits under the Anti-Drug Abuse Act of 1988 (see § 1.2001 *et seq.* of this part).

(3) *Use restrictions.* To the extent that the licensee is restricted from using the licensed spectrum to offer particular services under its license authorization, the use restrictions apply to the spectrum lessee as well.

(4) *Designated entity/entrepreneur rules.* (i) A licensee that holds a license pursuant to small business and/or entrepreneur provisions (see § 1.2110 of this part and § 24.709 of this chapter) and continues to be subject to unjust enrichment requirements (see § 1.2111 of this part and § 24.714 of this

chapter) and/or transfer restrictions (*see* § 24.839 of this chapter) may enter into a long-term *de facto* transfer leasing arrangement with any entity under the streamlined processing procedures described in this section, subject to any applicable unjust enrichment payment obligations and/or transfer restrictions (*see* § 1.2111 of this part and § 24.839 of this chapter).

(ii) A licensee holding a license won in closed bidding (*see* § 24.709 of this chapter) may, during the first five years of the license term, enter into a spectrum leasing arrangement with an entity not eligible to hold such a license pursuant to the requirements of section 24.709(a) of this chapter so long as it has met its five-year construction requirement (*see* §§ 24.203, 24.839(a)(6) of this chapter).

(iii) The amount of any unjust enrichment payment will be determined by the Commission as part of its review of the application under the same rules that apply in the context of a license assignment or transfer of control (*see* § 1.2111 of this part and § 24.714 of this chapter). If the spectrum leasing arrangement involves only part of the license area and/or part of the bandwidth covered by the license, the unjust enrichment obligation will be apportioned as though the license were being partitioned and/or disaggregated (*see* § 1.2111(e) of this part and § 24.714(c) of this chapter). A licensee will receive no reduction in its unjust enrichment payment obligation for a spectrum leasing arrangement that ends prior to the end of the fifth year of the license term.

(iv) A licensee that participates in the Commission's installment payment program (*see* § 1.2110(g) of this part) may enter into a long-term *de facto* transfer leasing arrangement without triggering unjust enrichment obligations provided that the lessee would qualify for as favorable a category of installment payments. A licensee using installment payment financing that seeks to lease to an entity not meeting the eligibility standards for as favorable a category of installment payments must make full payment of the remaining unpaid principal and any unpaid interest accrued through the effective date of the spectrum leasing arrangement (*see* § 1.2111(c) of this part). This requirement applies regardless of whether the licensee is leasing all or a portion of its bandwidth and/or license area.

(5) *Construction/performance requirements.* Any performance or build-out requirement applicable under a license authorization (e.g., a requirement that the licensee construct and operate one or more specific facilities, cover a certain percentage of geographic area, cover a certain percentage of population, or provide substantial service) always remains a condition of the license, and the legal responsibility for meeting such obligation is not delegable to the spectrum lessee(s).

(i) The licensee may attribute to itself the build-out or performance activities of its spectrum lessee(s) for purposes of complying with any applicable build-out or performance requirement.

(ii) If a licensee relies on the activities of a spectrum lessee to meet the licensee's performance or build-out obligation, and the spectrum lessee fails to engage in those activities, the Commission will enforce the applicable performance or build-out requirements against the licensee, consistent with the applicable rules.

(iii) If there are rules applicable to the license concerning the discontinuance of operation, the licensee is accountable for any such discontinuance and the rules will be enforced against the licensee regardless of whether the licensee was relying on the activities of a lessee to meet particular performance requirements.

(6) *Cellular cross-interest rule.* The cellular cross-interest rule applies to spectrum leasing arrangements involving a cellular authorization in a Rural Service Area (RSA), and leased cellular spectrum is attributable to the spectrum lessee pursuant to § 22.942 of this chapter (*see* §§ 22.942, 22.909 of this chapter).

(7) *Regulatory classification.* If the regulatory status of the licensee (e.g., common carrier or non-common carrier status) is prescribed by rule, the regulatory status of the spectrum lessee is prescribed in the same manner, except that § 20.9(a) of this chapter shall not preclude a licensee in the services covered by that rule from entering into a spectrum leasing arrangement with a spectrum lessee that chooses to operate on a PMRS, private, or non-commercial basis.

(8) *Regulatory fees.* The licensee remains responsible for payment of the required regulatory fees that must be paid in advance of its license term (*see* § 1.1152 of this part). Where, however, regulatory fees are paid annually on a per-unit basis (such as for CMRS services pursuant to § 1.1152 of this part), the licensee and spectrum lessee each are required to pay fees for those units associated with its respective operations.

(9) *E911 requirements.* To the extent the licensee is required to meet E911 obligations (*see* § 20.18 of this chapter), the spectrum lessee is required to meet those obligations with respect to the spectrum leased under the spectrum leasing arrangement insofar as the spectrum lessee's operations are encompassed with the E911 obligations.

(e) *Spectrum leasing application.* Parties entering into a long-term *de facto* transfer leasing arrangement are required to file an electronic application with the Commission, using FCC Form 603, and obtain Commission consent prior to consummating the transfer of *de facto* control of the leased spectrum, except that parties falling within the provisions of § 1.911(d) of this part may file the notification either electronically or manually.

(1) *Application fees.* The spectrum leasing application will be treated as a transfer of control for purposes of determining the applicable application fees as set forth in § 1.1102 of this part.

(2) *Streamlined approval procedures.* (i) The spectrum leasing application will be placed on public notice once the application is sufficiently complete and accepted for filing (*see* § 1.933 of this part).

(ii) Petitions to deny filed in accordance with § 309(d) of the Communications Act must comply with the provisions of § 1.939 of this part except that such petitions must be filed no later than 14 days following the date of the Public Notice listing the application as accepted for filing.

(iii) No later than 21 days following the date of the Public Notice listing an application as accepted for filing, the Wireless Telecommunications Bureau (Bureau) will affirmatively consent to the application, deny the application, or remove the application from streamlined processing for further review. For applications for which no prior public notice is required, the Bureau will affirmatively consent to the application, deny the application, or remove the application from streamlined processing for further review no later than 21 days following the date on which the application has been filed and any required application fee has been paid (*see* § 1.1102 of this part).

(iv) Grant of consent to the application will be reflected in a Public Notice (*see* § 1.933(a)(2) of this part) promptly issued after the grant.

(v) If the Bureau determines to remove an application from streamlined processing, it will issue a Public Notice indicating that the application has been removed from streamlined processing. Within 90 days of that Public Notice, the Bureau will either take action upon the application or provide Public Notice that an additional 90-day period for review is needed.

(vi) Consent to an application is not deemed granted until the Bureau affirmatively acts upon the application.

(vii) If any petition to deny is filed and the Bureau grants the application, the Bureau will deny the petition(s) and issue a concise statement of the reason(s) for denial, disposing of all substantive issues raised in the petition(s).

(3) *Public notice of application.* Applications under this subpart will be placed on an informational public notice on a weekly basis (see § 1.933(a) of this part).

(4) *Contents of the application.* The application must contain all information requested on the applicable form, FCC Form 603, and any additional information and certifications required by the rules in this chapter and any rules pertaining to the specific service for which the application is filed.

(5) *Effective date of a de facto transfer leasing arrangement.* If the Commission consents to the *de facto* transfer leasing arrangement, the *de facto* transfer leasing arrangement will be deemed effective in the Commission's records, and for purposes of the application of the rules set forth in this section on the date set forth in the application. If the Commission consents to the arrangement after that specified date, the spectrum leasing application will become effective on the date of the Commission affirmative consent.

(f) *Expiration, extension, or termination of spectrum leasing arrangement.* (1) Except as provided in paragraph (2) or (3) herein, a spectrum leasing arrangement entered into pursuant to this section will expire on the termination date set forth in the application. The Commission's consent to the *de facto* transfer leasing application includes consent to return the leased spectrum to the licensee at the end of the term of the spectrum leasing arrangement.

(2) A spectrum leasing arrangement may be extended beyond the initial term set forth in the spectrum leasing application pursuant to the application procedures set forth in § 1.9030(e) of this subpart. Where there is pending before the Commission at the date of termination of the spectrum leasing arrangement a proper and timely application seeking to extend the arrangement, the parties may continue to operate under the original spectrum leasing arrangement without further action by the Commission until such time as the Commission shall make a final determination with respect to the application.

(3) If a spectrum leasing arrangement is terminated earlier than the termination date set forth in the notification, either by the licensee or by the parties' mutual agreement, the licensee must file a notification with the Commission, no later than ten (10) days after the early termination, indicating the date of the termination. If the parties fail to put the spectrum leasing arrangement into effect, they must so notify the Commission consistent with the provisions of this section.

(4) The Commission will place information concerning an extension or an early termination of a spectrum leasing arrangement on public notice.

(g) *Assignment of spectrum leasing arrangement.* The spectrum lessee may assign its lease to another entity provided that the licensee has agreed to such an assignment, there is privity between the licensee and the assignee, and the assignment of the spectrum lessee is approved by the Commission pursuant to the same application and approval procedures set forth in this section. In the case of a *pro forma* assignment, the parties involved in the *pro forma* transaction may file the notification regarding the action subject to the rules and procedures regarding *pro forma* transactions applicable to licensees set forth in § 1.948(c)(1) of this part. The Commission will place information concerning the a notification relating to an assignment, whether substantial or *pro forma*, on public notice.

(h) *Transfer of control of spectrum lessee.* A spectrum lessee contemplating a transfer of control must obtain Commission consent using the same application and Commission consent procedures set forth in this section. In the case of a *pro forma* transfer of control of the spectrum lessee, the parties involved in the *pro forma* transaction may file the notification regarding the action subject to the rules and

procedures regarding *pro forma* transactions applicable to licensees set forth in § 1.948(c)(1) of this part. The Commission will place information concerning the a notification relating to a transfer of control, whether substantial or *pro forma*, on public notice.

(i) *Revocation or automatic cancellation of a license or the spectrum lessee's operating authority.* (1) In the event an authorization held by a licensee that has entered into a spectrum leasing arrangement is revoked or cancelled, the spectrum lessee will be required to terminate its operations no later than the date on which the licensee ceases to have authority to operate under the license, except as provided in paragraph (2) of this subsection.

(2) In the event of a license revocation or cancellation, the Commission will consider a request by the spectrum lessee for special temporary authority (*see* § 1.931 of this part) to provide the spectrum lessee with an opportunity to transition its users in order to minimize service disruption to business and other activities.

(3) In the event of a license revocation or cancellation, and the required termination of the spectrum lessee's operations, the former spectrum lessee does not, as a result of its former status, receive any preference over any other party should the spectrum lessee seek to obtain the revoked or cancelled license.

(j) *Subleasing.* A spectrum lessee may sublease spectrum usage rights subject to the following conditions. Parties entering into a spectrum subleasing arrangement are required to comply with the Commission's rules for obtaining approval for spectrum leasing arrangements provided in this subpart and are governed by those same policies. The application filed by parties to a spectrum subleasing arrangement must include written consent from the licensee to the proposed arrangement. Once a spectrum subleasing arrangement has been approved by the Commission, the sublessee becomes the party primarily responsible for compliance with Commission rules and policies.

(k) *Renewal.* A licensee and spectrum lessee that have entered into a spectrum leasing arrangement whose term continues to the end of the current term of the license authorization may, contingent on the Commission's grant of the license renewal, extend the spectrum leasing arrangement during the term of the renewed license authorization. The licensee must notify the Commission of such an extension of the spectrum leasing arrangement on the same application it submits for license renewal (*see* § 1.949 of this part). The spectrum lessee may operate under the extended term, without further action by the Commission, until such time as the Commission shall make a final determination with respect to the extension of the spectrum leasing arrangement.

§ 1.9035 Short-term *de facto* transfer leasing arrangements.

(a) *Overview.* Under the provisions of this section, a licensee (in any of the included services) and a spectrum lessee may enter into a short-term *de facto* transfer leasing arrangement in which the licensee retains *de jure* control of the license while *de facto* control of the leased spectrum is transferred to the spectrum lessee for the duration of the spectrum leasing arrangement, subject to prior Commission consent pursuant to the application procedures set forth in this section. A "short-term" *de facto* transfer leasing arrangement has an individual or combined term of not longer than 360 days.

(b) *Rights and responsibilities of licensee.* The rights and responsibilities applicable to a licensee that enters into a short-term *de facto* transfer leasing arrangement are the same as those applicable to a licensee that enters into a long-term *de facto* transfer leasing arrangement, as set forth in § 1.9030(b) of this subpart.

(c) *Rights and responsibilities of spectrum lessee.* The rights and responsibilities applicable to a spectrum lessee that enters into a short-term *de facto* transfer leasing arrangement are the same as those

applicable to a spectrum lessee that enters into a long-term *de facto* transfer leasing arrangement, as set forth in § 1.9030(c) of this subpart.

(d) *Applicability of particular service rules and policies.* Under a short-term *de facto* leasing arrangement, the service rules and policies apply to the licensee and spectrum lessee in the same manner as under long-term *de facto* transfer leasing arrangements (see § 1.9030(d) of this subpart), except as provided herein:

(1) *Use restrictions and regulatory classification.* Use restrictions applicable to the licensee also apply to the spectrum lessee except that § 20.9(a) of this chapter shall not preclude a licensee in the services covered by that rule from entering into a spectrum leasing arrangement with a spectrum lessee that chooses to operate on a PMRS, private, or non-commercial basis, and except that a licensee with an authorization that restricts use of spectrum to non-commercial uses may enter into a short-term *de facto* transfer leasing arrangement that allows the spectrum lessee to use the spectrum commercially.

(2) *Designated entity/entrepreneur rules.* Unjust enrichment provisions (see § 1.2111 of this part) and transfer restrictions (see § 24.839 of this chapter) do not apply with regard to a short-term *de facto* transfer leasing arrangement.

(3) *Construction/performance requirements.* The licensee is not permitted to attribute to itself the activities of its spectrum lessee when seeking to establish that performance or build-out requirements applicable to the licensee have been met.

(4) *Cellular cross-interest rule and policies.* The cellular cross-interest rule and policies (see § 22.942 of this chapter) do not apply with regard to short-term *de facto* transfer leasing arrangements.

(5) *E911 requirements.* If E911 obligations apply to the licensee (see § 20.18 of this chapter), the licensee retains the obligations with respect to leased spectrum. A spectrum lessee entering into a short-term *de facto* transfer leasing arrangement is not separately required to comply with any such obligations in relation to the leased spectrum.

(e) *Spectrum leasing application.* Parties entering into a short-term *de facto* transfer leasing arrangement are required to file an electronic application with the Commission, using FCC Form 603, and obtain Commission consent prior to consummating the transfer of *de facto* control of the leased spectrum, except that parties falling within the provisions of § 1.911 of this part may file the application either electronically or manually. Commission approval of such application is granted pursuant to special temporary authority (STA) policies (see § 309(f) of the Communications Act).

(1) *Application fees.* The spectrum leasing application will be treated as a transfer of control for purposes of determining the applicable application fees as set forth in § 1.1102 of this part.

(2) *Approval procedures.* (i) The spectrum leasing application must be filed at least ten (10) days prior to the date on which the spectrum lessee seeks to commence operation under the spectrum leasing arrangement. If the application meets the conditions specified in this section for a short-term *de facto* transfer leasing arrangement, it will be granted or denied within ten (10) days of receipt of the complete application.

(ii) The Commission may grant authority to permit operation under a short-term *de facto* transfer leasing arrangement for a maximum period of 180 days. The Commission may grant extension of the temporary authority as provided in § 1.9035(g)(2) of this section.

(iii) In no event may parties use the procedures for short-term *de facto* transfer leasing arrangements to enter into arrangements that would exceed 360 days.

(3) *Contents of the application.* (i) The application must contain all information requested on the applicable form, FCC Form 603, and any additional information and certifications required by the rules in this chapter and any rules pertaining to the specific service for which the application is filed.

(ii) The application must contain a showing that grant of the temporary authority to permit implementation of the short-term *de facto* transfer leasing arrangement would further the public interest.

(4) *Effective date of spectrum leasing arrangement.* The spectrum leasing arrangement will be deemed effective in the Commission's records, and for purposes of the application of the rules set forth in this section, on the date specified in the grant of temporary authority.

(f) *Restrictions on the use of short-term de facto transfer leasing arrangements.* (1) The licensee and spectrum lessee are not permitted to use the special rules and expedited procedures applicable to short-term *de facto* transfer leasing arrangements for arrangements that in fact will exceed 360 days, or that the parties reasonably expect to exceed 360 days.

(2) The licensee and spectrum lessee must submit, in sufficient time prior to the expiration of the short-term *de facto* transfer spectrum leasing arrangement, the appropriate application under the rules and procedures applicable to long-term *de facto* leasing arrangements, and obtain Commission consent pursuant to those procedures.

(g) *Expiration, extension, or termination of the spectrum leasing arrangement.* (1) Except as provided in paragraph (2) or (3) herein, a spectrum leasing arrangement entered into pursuant to this section will expire on the termination date set forth in the grant of temporary authority. The Commission's grant of temporary authority pursuant to the *de facto* transfer leasing application includes consent to return the leased spectrum to the licensee at the end of the term of the spectrum leasing arrangement.

(2) Upon proper application (*see* subsection 1.9035(e) of this section), a short-term *de facto* transfer leasing arrangement may be extended beyond the initial term set forth in the application, for one or more terms of up to 180 days each, provided that the initial term and extension(s) together would not result in a leasing arrangement that exceeds a total of 360 days.

(3) If a spectrum leasing arrangement is terminated earlier than the termination date set forth in the notification, either by the licensee or by the parties' mutual agreement, the licensee must file a notification with the Commission, no later than ten (10) days after the early termination, indicating the date of the termination. If the parties fail to put the spectrum leasing arrangement into effect, they must so notify the Commission consistent with the provisions of this section.

(h) *Conversion of a short-term spectrum leasing arrangement into a long-term de facto transfer leasing arrangement.* (1) In the event the licensee and spectrum lessee involved in a short-term *de facto* transfer leasing arrangement seek to extend the spectrum leasing arrangement beyond the 360-day limit for short-term *de facto* transfer leasing arrangements, the parties may do so provided that they meet the conditions set forth in this subsection.

(2) If a licensee that holds a license that continues to be subject to transfer restrictions and/or requirements relating to unjust enrichment pursuant to the Commission's small business and/or entrepreneur provisions (*see* § 1.2110 of this part and § 24.709 of this chapter) seeks to extend a short-term *de facto* transfer leasing arrangement with its spectrum lessee (or related entities, as determined pursuant to § 1.2110(b)(2) of this part) beyond 360 days, it may convert its arrangement into a long-term *de facto* transfer spectrum leasing arrangement provided that it complies with the procedures for entering into a long-term *de facto* transfer leasing arrangement and that it pays any unjust enrichment that would have been owed had the licensee filed a long-term *de facto* transfer spectrum leasing application at the time it applied for the initial short-term *de facto* transfer leasing arrangement.

(3) The licensee and spectrum lessee are not permitted to convert a short-term *de facto* transfer leasing arrangement into a long-term *de facto* transfer leasing arrangement if the parties would have been restricted, in the first instance, from entering into a long-term *de facto* transfer leasing arrangement because of a transfer, use, or other restriction applicable to the particular service (*see generally* § 1.9030 of this subpart).

(i) *Assignment of spectrum leasing arrangement.* The rule applicable to long-term *de facto* transfer leasing arrangements (*see* § 1.9030(g) of this subpart) applies in the same manner to short-term *de facto* transfer leasing arrangements.

(j) *Transfer of control of spectrum lessee.* The rule applicable to long-term *de facto* transfer leasing arrangements (*see* § 1.9030(h) of this subpart) applies in the same manner to short-term *de facto* transfer leasing arrangements.

(k) *Revocation or automatic cancellation of a license or the spectrum lessee's operating authority.* The rule applicable to long-term *de facto* transfer leasing arrangements (*see* § 1.9030(i) of this subpart) applies in the same manner to short-term *de facto* transfer leasing arrangements.

(l) *Subleasing.* A spectrum lessee that has entered into a short-term *de facto* transfer leasing arrangement is not permitted to enter into a spectrum subleasing arrangement.

(m) *Renewal.* The rule applicable with regard to long-term *de facto* transfer leasing arrangements (*see* § 1.9030(k) of this subpart) applies in the same manner to short-term *de facto* transfer leasing arrangements, except that the extension of the short-term *de facto* transfer leasing arrangement into the term of the renewed license authorization cannot enable the combined terms of the short-term *de facto* transfer leasing arrangements to exceed 360 days. The licensee must notify the Commission of such an extension of the spectrum leasing arrangement on the same application it submits for license renewal (*see* § 1.949 of this part).

§ 1.9040 Contractual requirements applicable to spectrum leasing arrangements.

(a) Agreements between licensees and spectrum lessees concerning spectrum leasing arrangements entered into pursuant to the rules of this subpart must contain the following provisions:

(i) The spectrum lessee must comply at all times with applicable rules set forth in this chapter and other applicable law, and the spectrum leasing arrangement may be revoked, cancelled, or terminated by the licensee or Commission if the spectrum lessee fails to comply with the applicable requirements;

(ii) If the license is revoked, cancelled, terminated, or otherwise ceases to be in effect, the spectrum lessee has no continuing authority or right to use the leased spectrum unless otherwise authorized by the Commission;

(iii) The spectrum leasing arrangement is not an assignment, sale, or transfer of the license itself;

(iv) The spectrum leasing arrangement shall not be assigned to any entity that is ineligible or unqualified to enter into a spectrum leasing arrangement under the applicable rules as set forth in this subpart;

(v) The licensee shall not consent to an assignment of a spectrum leasing arrangement unless such assignment complies with applicable Commission rules and regulations.

(b) Agreements between licensees that hold licenses subject to the Commission's installment payment program (*see* § 1.2110 of this part and related service-specific rules) and spectrum lessees must contain the following additional provisions:

(i) The express acknowledgement that the license remains subject to the Commission's priority lien and security interest in the license and related proceeds, consistent with the provisions set forth in section 1.9045 of this subpart; and

(ii) The agreement that the spectrum lessee shall not hold itself out to the public as the holder of the license and shall not hold itself out as a licensee by virtue of its having entered into a spectrum leasing arrangement.

§ 1.9045 Requirements for spectrum leasing arrangements entered into by licensees participating in the installment payment program.

(a) If a licensee that holds a license subject to the Commission's installment payment program (*see* § 1.2110 of this part and related service-specific rules) enters into a spectrum leasing arrangement pursuant to the rules in this subpart, the licensee remains fully and solely responsible for the outstanding debt amount owed to the Commission. Nothing in a spectrum leasing arrangement, or arising from a spectrum lessee's bankruptcy or receivership, can modify the licensee's sole responsibility for its obligation to repay its entire debt obligation under the installment payment program pursuant to applicable Commission rules and regulations and the associated note(s) and security agreement(s).

(b) If a licensee holds a license subject to the installment payment program rules (*see* § 1.2110 and related service-specific rules), the licensee and spectrum lessee may effectuate a spectrum leasing arrangement with respect to that license only insofar as Commission-required and approved note(s) and security agreement(s) have been executed that expressly establish, in the context of a spectrum leasing arrangement, the licensee's sole responsibility and obligation to repay the entire amount of its debt obligations to the Commission relating to the license.

§ 1.9050 Who may sign spectrum leasing notifications and applications.

Under the rules set forth in this subpart, certain notifications and applications to the Commission must be filed by licensees and spectrum lessees that enter into spectrum leasing arrangements. In addition, the rules require that certain notifications and applications be filed by the licensee and/or the spectrum lessee after they have entered into such arrangements. Whether the signature of the licensee, the spectrum lessee, or both, is required will depend on the particular notification or application involved, and whether the leasing arrangement concerns a spectrum manager leasing arrangement or a *de facto* transfer leasing arrangement.

(a) Except as provided in paragraph (b) of this section, the notifications, applications, amendments, and related statements of fact required by the Commission (including certifications) must be signed as follows (either electronically or manually, *see* paragraph (d) of this section): (1) By the licensee or spectrum lessee, if an individual; (2) by one of the partners if the licensee or lessee is a partnership; (3) by an officer, director, or duly authorized employee, if the licensee or lessee is a corporation; or (4) by a member who is an officer, if the licensee or lessee is an unincorporated association.

(b) Notifications, applications, amendments, and related statements of fact required by the Commission may be signed by the licensee or spectrum lessee's attorney in case of the licensee's or lessee's physical disability or absence from the United States. The attorney shall, when applicable, separately set forth the reason why the application is not signed by the licensee or lessee. In addition, if any matter is stated on the basis of the attorney's belief only (rather than knowledge), the attorney shall

separately set forth the reasons for believing that such statements are true. Only the original of notifications, applications, amendments, and related statements of fact need be signed.

(c) Notifications, applications, amendments, and related statements of fact need not be signed under oath. Willful false statements made therein, however, are punishable by fine and imprisonment (see 18 U.S.C. § 1001), and by appropriate administrative sanctions, including revocation of license pursuant to § 312(a)(1) of the Communications Act of 1934 or revocation of the spectrum leasing arrangement.

(d) "Signed," as used in this section, means, for manually filed notifications and applications only, an original hand-written signature or, for electronically filed notifications and applications only, an electronic signature. An electronic signature shall consist of the name of the licensee or spectrum lessee transmitted electronically via ULS and entered on the application as a signature.

§1.9055 Assignment of file numbers to spectrum leasing notifications and applications.

Spectrum leasing notifications or applications submitted pursuant to the rules of this subpart are assigned file numbers and service codes in order to facilitate processing in the manner in which applications in subpart F are assigned file numbers (see § 1.926 of this part).

§ 1.9060 Amendments, waivers, and dismissals affecting spectrum leasing notifications and applications.

(a) Notifications and applications regarding spectrum leasing arrangements may be amended in accordance with the policies, procedures, and standards applicable to applications as set forth in subpart F of this part (see §§ 1.927, 1.929 of this part).

(b) The Commission may waive specific requirements of the rules affecting spectrum leasing arrangements and the use of leased spectrum, on its own motion or upon request, in accordance with the policies, procedures, and standards set forth in subpart F of this part (see § 1.925 of this part).

(c) Notifications and pending applications regarding spectrum leasing arrangements may be dismissed in accordance with the policies, procedures, and standards applicable to applications as set forth in subpart F of this part (see § 1.935 of this part).

* * * * *

PART 27 – MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

8. The authority citation for Part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

9. Amend Section 27.4 by deleting the paragraph including and defining "*Band Manager*."

* * * * *

10. Revise the first paragraph of section 27.10 by deleting the phrase including reference to "*Band Manager* licenses." This first paragraph should now read as follows:

Except with respect to *Guard Band Manager* licenses, which are subject to subpart G of this part, the following rules apply concerning the regulatory status in the frequency bands specified in § 27.5.

* * * * *

11. Revise section 27.12 by deleting subsection (b) altogether and by removing the subsection reference "(a)" from the sole paragraph remaining under this section. This remaining paragraph in section 27.12 should read as follows:

Except as provided in § 27.604, any entity other than those precluded by section 310 of the Communications Act of 1934, as amended, 47 U.S.C. § 310, is eligible to hold a license under this part.

* * * * *

APPENDIX C

FINAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking (NPRM)*.² The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

A. Need for, and Objectives of, the Report and Order

2. In the Report and Order, we adopt policies, rules, and procedures designed to facilitate the ability of many Wireless Radio Services licensees, including small businesses, to lease spectrum usage rights to third parties. Our action is intended to facilitate significantly broader access to valuable spectrum resources by enabling a wide array of facilities-based providers of broadband and other communication services, including small businesses, to enter into spectrum leasing arrangements with many Wireless Radio Service licensees. We believe that our approach will enable the public to benefit from the provision of additional wireless services, with less regulatory process and less delay than under existing policies and rules governing the transfer and assignment of spectrum licenses. These flexible policies continue our evolution toward greater reliance on the marketplace to expand the scope of available wireless services and devices, leading to more efficient and dynamic use of spectrum. The result, we believe, will be to the ultimate benefit of consumers throughout the country. Facilitating development of these secondary markets enhances and complements several of the Commission's major policy initiatives and public interest objectives, including our efforts to encourage the development of broadband services for all Americans, promote increased facilities-based competition among service providers, enhance economic opportunities and access for the provision of communications by designated entities,⁴ and enable development of additional and innovative services in rural areas.

3. To achieve these goals, we adopt separate sets of policies to facilitate two different categories of spectrum leases, based on the scope of the rights and responsibilities to be assumed by the lessee: spectrum manager leasing and *de facto* transfer leasing. These two categories are discussed below.

4. With respect to spectrum manager leasing arrangements, we permit licensees to enter into spectrum leases without having to obtain prior Commission approval, so long as the licensee retains both *de jure* control of the license and *de facto* control over the leased spectrum pursuant to the updated *de facto* control standard for leasing that we adopt in the Report and Order. The licensee must file a

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, *Notice of Proposed Rulemaking*, 15 FCC Rcd 24203, 24241 (2000) (*NPRM*).

³ See 5 U.S.C. § 604.

⁴ "Designated entities" include small businesses, rural telephone companies, and businesses owned by members of minority groups and/or women. Through the years, the Commission has implemented policies to help ensure that these entities are given the opportunity to provide spectrum-based services, consistent with Sections 309(j)(3) and (4) of the Communications Act. See generally 47 U.S.C. §§ 309(j)(3), (4); 47 C.F.R. § 1.2110; Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Second Report and Order*, 9 FCC Rcd 2348 (1994).

notification with the Commission regarding a spectrum manager leasing arrangement within 14 days of entering into the arrangement and at least 21 days in advance of operation of facilities by the lessee.

5. Within the category of *de facto* transfer leasing, we specify different policies for long-term spectrum leasing arrangements (longer than 360 days) and short-term spectrum leasing arrangements (360 days or less). With respect to *de facto* transfer leasing arrangements longer than 360 days, we adopt measures to allow licensees and spectrum lessees substantial flexibility to enter into a variety of contractual arrangements that transfer *de facto* control over the use of the leased spectrum, as well as associated rights and responsibilities, to spectrum lessees for a defined period of time, subject to prior Commission consent pursuant to streamlined application procedures. Under these streamlined procedures, licensees and spectrum lessees must file applications with the Commission. These applications will be granted within 21 days from the date of the public notice that lists the application as accepted for filing, or will be offlined, *see* Report and Order, paras. 151-152, where additional time is necessary to evaluate the proposed leasing arrangement. We authorize short-term leasing arrangements of up to 360 days in length pursuant to special temporary authority (STA) procedures. Under the short-term leasing procedures, applicants will file an application for the necessary approval from the Commission. Within ten days of receipt of that application, the Commission will either grant or deny the special temporary authority to permit the lease arrangement to be implemented.

6. In addition to the spectrum leasing policies adopted in the Report and Order, we also adopt rules and policies to apply streamlined processing to transfer of control and license assignment applications in the Wireless Radio Services encompassed within the new spectrum leasing policies. Under this streamlined procedure, transfer of control and license assignment applications will be granted or offlined, *see* Report and Order, paras. 197-198, for additional review where additional time is necessary, within 21 days of being placed on public notice as accepted for filing.

7. Finally, in the context of spectrum leasing, we determine that the Commission at this time will only gather the information necessary for spectrum manager leasing notifications and *de facto* transfer leasing applications. This collected information is similar to the information the Commission collects in reviewing and acting on applications for consent to transfers of control and license assignment, and will provide a significant amount of data to parties seeking to gain access to spectrum usage rights through leasing. At this stage of the proceeding, we do not impose any additional information filing requirements for spectrum leasing or establish a spectrum registry. Rather, we further explore this issue in the Further Notice (including the respective roles of the Commission and the private sector in compiling such information as well as the potential costs for the parties to spectrum leasing arrangements and the Commission) because we believe that access to information is a necessary ingredient in promoting secondary markets.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

8. Although no comments were submitted directly in response to the IRFA, many commenters noted that spectrum leasing could benefit small or rural carriers by enabling access to unused spectrum licensed to other entities, and could promote the deployment of wireless services to rural and underserved populations.⁵ OPASTCO, for example, stated that the Commission would serve the public interest while furthering the RFA⁶ and SBREFA⁷ by granting small carriers additional flexibility needed to serve their

⁵ *See, e.g.*, Blooston Rural Carriers Comments; NTCA Comments; OPASTCO Comments; RCA Comments; RTG Comments; Securicor Comments at 6; U.S. Small Business Administration Comments.

⁶ Regulatory Flexibility Act, as amended, 5 U.S.C. §§ 601-612.

⁷ Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

communities and reducing administrative burdens on those small carriers that may wish to pursue innovative arrangements for spectrum access with other license holders.⁸ As described in Section E, *infra*, the Report and Order provides significant flexibility for licensees in many Wireless Radio Services and for potential spectrum lessees to enter into spectrum leasing arrangements meeting their business needs, consistent with applicable statutory requirements. Moreover, the Report and Order adopts rules and policies to simplify and streamline the necessary administrative steps.

9. In a similar vein, RTG noted that the leasing of spectrum usage rights would increase the use of assigned spectrum and would place spectrum into the hands of rural telephone companies and entrepreneurs who are willing to serve the less populated portions of license areas.⁹ The Report and Order, as explained in Section E, *infra*, specifically seeks to facilitate more efficient spectrum use and would provide rural telephone companies and other innovators with access to spectrum to implement new wireless services and to help meet the wireless telecommunications needs in underserved areas (including rural areas).¹⁰

10. In addition to these general observations, the Commission in the *NPRM* had specifically requested comment on the extent to which the qualification and eligibility rules and policies that are generally applicable to each licensee in a particular service should be applied to third-party entities seeking to lease spectrum.¹¹ The Commission requested comment on whether and how the “designated entity,”¹² entrepreneur,¹³ bidding credit, and unjust enrichment rules that apply to many services should be implemented with respect to spectrum leasing arrangements between designated entity licensees and third parties that do not qualify for the same status.¹⁴ The Commission noted that, while interested in promoting spectrum leasing, it also sought to ensure that its approach would not invite circumvention of the underlying purposes of these designated entity-related policies and rules.¹⁵

11. In response to this request for comment, RTG agreed with the Commission that leasing should not be used as a means of circumventing eligibility or service rules.¹⁶ Leap Wireless, a designated entity, argued that the Commission should retain and apply its designated entity restrictions to all forms of spectrum leasing.¹⁷ Leap Wireless further contended that permitting designated entities to lease spectrum

⁸ See OPASTCO Comments at 2-4.

⁹ See RTG Comments at 2.

¹⁰ See Report and Order at ¶ 2.

¹¹ See *NPRM* at ¶¶ 44-45.

¹² “Designated entities” include small businesses, rural telephone companies, and businesses owned by members of minority groups and/or women. See 47 C.F.R. § 1.2110.

¹³ For broadband PCS licenses, the Commission created entrepreneur set-asides of spectrum available only to eligible entities. See 47 C.F.R. § 24.709.

¹⁴ *NPRM* at ¶¶ 44-45, 47-48, 52-55, 77.

¹⁵ *NPRM* at ¶ 43.

¹⁶ See RTG Comments at 27; RTG Reply Comments at 17-19.

¹⁷ See Leap Wireless Reply Comments at 1-7.

usage rights to entities that are not similarly qualified would allow manipulation and evasion of the Commission's designated entity policies and rules.¹⁸

12. In contrast, a number of commenters argued that designated entity licensees should be free to enter into lease agreements with non-designated entities.¹⁹ Alaska Native Wireless, Cook Inlet, TeleCorp, and Winstar stated that designated entities, entrepreneurs, small businesses, and minorities should be permitted to lease their spectrum without restrictions on spectrum lessee eligibility under the designated entity rules.²⁰ Alaska Native Wireless, Cingular Wireless, and Cook Inlet argued that if the eligibility rules were applied to lessees, many small businesses and entrepreneurs would be unable to take advantage of the benefits of secondary markets.²¹ These parties suggested that unrestricted leasing would give designated entity licensees a mechanism for raising capital to build out and operate their systems in unleased license areas.²² Nextel, AT&T Wireless, and Cingular Wireless argued that the Commission should refrain from imposing an eligibility requirement that would limit the pool of potential lessees.²³

13. With regard to the applicability of the Commission's unjust enrichment rules, a number of commenters argued that designated entities that lease spectrum to non-designated entities should not be required to make unjust enrichment payments to the Commission.²⁴ The U.S. Small Business Administration opposed applying unjust enrichment provisions to the leasing of spectrum by designated entities because it believes that leasing spectrum is fundamentally different from selling it.²⁵ Similarly, AT&T Wireless argued that small businesses that lease spectrum have not been "unjustly enriched" because they are not selling the asset that was discounted.²⁶ NTCA stated that requiring small businesses, such as rural telephone companies, to repay bidding credits would serve as a significant disincentive for carriers to be inventive about using spectrum.²⁷ Blooston Rural Carriers argued that allowing small businesses to retain the full value of their bidding credits when leasing their spectrum would promote greater opportunity for small businesses, because it would encourage these carriers to enter into a variety of business ventures.²⁸

¹⁸ See *id.*

¹⁹ See, e.g., Alaska Native Wireless Comments at 9-13; AT&T Wireless Comments at 8-9; Blooston Rural Carriers Comments at 5-6; Cingular Wireless Comments at 8; Cook Inlet Comments at 7-9; NTCA Comments at 6-8; TeleCorp Reply Comments at 1-4; Winstar Comments at 13-14.

²⁰ See Alaska Native Wireless Comments at 9-13; Cook Inlet Comments at 9; TeleCorp Reply Comments at 3-4; Winstar Comments at 13-14.

²¹ See Alaska Native Wireless Comments at 11; Cingular Wireless Comments at 8; Cook Inlet Comments at 7-9.

²² See Alaska Native Wireless Comments at 11; Cingular Wireless Comments at 8; Cook Inlet Comments at 8.

²³ See AT&T Wireless Comments at 8; Cingular Wireless Comments at 8; Nextel Comments at 15; Nextel Reply Comments at 13.

²⁴ See AT&T Wireless Comments at 8-9; Blooston Rural Carriers Comments at 5-6; NTCA Comments at 6-8; U.S. Small Business Administration Comments at 1-4.

²⁵ See U.S. Small Business Administration Comments at 1-4.

²⁶ See AT&T Wireless Comments at 8-9.

²⁷ See NTCA Comments at 6-8.

²⁸ See Blooston Rural Carriers Comments at 5-6; Blooston Rural Carriers Reply Comments at 5.

14. In contrast, RTG stated that designated entities should have the right to lease their spectrum to any party that qualifies to use the spectrum, but then should be required to pay back any auction subsidies they received from the Commission.²⁹ RTG noted that unjust enrichment payments would not foreclose such spectrum leasing as the cost likely would be factored into the lease negotiations between designated entities and non-designated entities.³⁰ Cook Inlet also argued that a licensee who received the benefit of a bidding credit and who subsequently enters into a long-term lease should be required to pay back some or all of the bidding credit.³¹ With respect to short-term leases, however, Cook Inlet argued that a licensee should not have to make an unjust enrichment payment.³²

15. The Commission devoted significant consideration to the applicability of its designated entity qualification rules to potential spectrum lessees seeking access to spectrum licensed to designated entities, as well as the applicability of its unjust enrichment policies. Reaching a decision on these issues required a balancing of complex competing considerations. The Commission concluded, however, that its statutory obligations and its goals to promote opportunities for designated entities (which includes a significant number of small businesses) would be better served by enforcing its designated entity and unjust enrichment policies in the context of spectrum leases involving *de facto* transfer leasing, as explained in Section E, *infra*.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

16. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by proposed rules.³³ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."³⁴ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.³⁵ A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).³⁶

17. In the following paragraphs, we further describe and estimate the number of small entity licensees that may be affected by the rules we adopt in the Report and Order. Since this rulemaking proceeding applies to multiple services, we will analyze the number of small entities affected on a service-by-service basis. Because the Report and Order does not revise any rules involving the Satellite Services, we do not provide an assessment of satellite-related small businesses. When identifying small

²⁹ See RTG Reply Comments at 18-19.

³⁰ See *id.* at 19.

³¹ See Cook Inlet Comments at 11-12.

³² See *id.* at 12.

³³ 5 U.S.C. § 604(a)(3).

³⁴ 5 U.S.C. § 601(6).

³⁵ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

³⁶ 15 U.S.C. § 632.

entities that could be affected by our new rules, we provide information describing auction results, including the number of small entities that are winning bidders. We note, however, that the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily reflect the total number of small entities currently in a particular service. The Commission does not generally require that applicants provide business size information, except in the context of an assignment or transfer of control application where unjust enrichment issues are implicated.

18. **Cellular Licensees.** The SBA has developed a small business size standard for small businesses in the category "Cellular and Other Wireless Telecommunications."³⁷ Under that SBA category, a business is small if it has 1,500 or fewer employees.³⁸ According to the Bureau of the Census, only twelve firms out of a total of 977 cellular and other wireless telecommunications firms that operated for the entire year in 1997 had 1,000 or more employees.³⁹ Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers are small businesses under the SBA's definition.

19. **220 MHz Radio Service – Phase I Licensees.** The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications" companies. This category provides that a small business is a wireless company employing no more than 1,500 persons.⁴⁰ According to the Census Bureau data for 1997, only twelve firms out of a total of 977 such firms that operated for the entire year in 1997, had 1,000 or more employees.⁴¹ If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business standard.

20. **220 MHz Radio Service – Phase II Licensees.** The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted a small business size standard for defining "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁴² This small business standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.⁴³ A "very small business" is defined as an entity that, together with

³⁷ 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517212.

³⁸ *Id.*

³⁹ U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 513322 (October 2000).

⁴⁰ 13 C.F.R. § 121.201, NAICS code 517212.

⁴¹ U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form Organization)," Table 5, NAICS code 513322 (October 2000).

⁴² Amendment of Part 90 of the Commission's Rules to Provide For the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, *Third Report and Order*, 12 FCC Rcd 10943, 11068-70 ¶¶ 291-295 (1997).

⁴³ *Id.* at 11068 ¶ 291.

its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years.⁴⁴ The SBA has approved these small size standards.⁴⁵ Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.⁴⁶ In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.⁴⁷ Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.⁴⁸ A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.⁴⁹

21. Lower 700 MHz Band Licenses. We adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.⁵⁰ We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.⁵¹ A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.⁵² Additionally, the lower 700 MHz Service has a third category of small business status that may be claimed for Metropolitan/Rural Service Area (MSA/RSA) licenses. The third category is entrepreneur, which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.⁵³ The SBA has approved these small size standards.⁵⁴ An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329

⁴⁴ *Id.*

⁴⁵ See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998.

⁴⁶ See generally "220 MHz Service Auction Closes," *Public Notice*, 14 FCC Rcd 605 (WTB 1998).

⁴⁷ See "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made," *Public Notice*, 14 FCC Rcd 1085 (WTB 1999).

⁴⁸ See "Phase II 220 MHz Service Spectrum Auction Closes," *Public Notice*, 14 FCC Rcd 11218 (WTB 1999).

⁴⁹ See "Multi-Radio Service Auction Closes," *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

⁵⁰ See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, 17 FCC Rcd 1022 (2002).

⁵¹ *Id.* at 1087-88 ¶ 172.

⁵² *Id.*

⁵³ *Id.* at 1088 ¶ 173.

⁵⁴ See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999.

licenses.⁵⁵ A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 CMA licenses.⁵⁶ Seventeen winning bidders claimed small or very small business status and won sixty licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.⁵⁷

22. **Upper 700 MHz Band Licenses.** The Commission released a *Report and Order* authorizing service in the upper 700 MHz band.⁵⁸ This auction, previously scheduled for January 13, 2003, has been postponed.⁵⁹

23. **Paging.** In the *Paging Second Report and Order*, we adopted a size standard for “small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁶⁰ A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.⁶¹ The SBA has approved this definition.⁶² An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold.⁶³ Fifty-seven companies claiming small business status won 440 licenses.⁶⁴ An auction of Metropolitan Economic Area (MEA) and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold.⁶⁵ 132 companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.⁶⁶ Currently, there are approximately 24,000 Private Paging site-specific licenses and 74,000

⁵⁵ See “Lower 700 MHz Band Auction Closes,” *Public Notice*, 17 FCC Rcd 17272 (WTB 2002).

⁵⁶ See “Lower 700 MHz Band Auction Closes,” *Public Notice*, 18 FCC Rcd 11873 (WTB 2003).

⁵⁷ *Id.*

⁵⁸ Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, *Second Memorandum Opinion and Order*, 16 FCC Rcd 1239 (2001).

⁵⁹ See “Auction of Licenses for 747-762 and 777-792 MHz Bands (Auction No. 31) Is Rescheduled,” *Public Notice*, 16 FCC Rcd 13079 (WTB 2003).

⁶⁰ Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems, *Second Report and Order*, 12 FCC Rcd 2732, 2811-2812 ¶¶ 178-181 (*Paging Second Report and Order*); see also Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems, *Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 10030, 10085-10088 ¶¶ 98-107 (1999).

⁶¹ *Paging Second Report and Order*, 12 FCC Rcd at 2811 ¶ 179.

⁶² See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

⁶³ See “929 and 931 MHz Paging Auction Closes,” *Public Notice*, 15 FCC Rcd 4858 (WTB 2000).

⁶⁴ See *id.*

⁶⁵ See “Lower and Upper Paging Band Auction Closes,” *Public Notice*, 16 FCC Rcd 21821 (WTB 2002).

⁶⁶ See “Lower and Upper Paging Bands Auction Closes,” *Public Notice*, 18 FCC Rcd 11154 (WTB 2003).

Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service*, 608 private and common carriers reported that they were engaged in the provision of either paging or "other mobile" services.⁶⁷ Of these, we estimate that 589 are small, under the SBA-approved small business size standard.⁶⁸ We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

24. **Broadband Personal Communications Service (PCS).** The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.⁶⁹ For Block F, an additional small business size standard for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.⁷⁰ These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.⁷¹ No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 "small" and "very small" business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.⁷² On March 23, 1999, the Commission reaucted 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.⁷³

25. **Narrowband PCS.** The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, "small businesses" were entities with average gross revenues for the prior three calendar years of \$40 million or less.⁷⁴ Through these auctions, the Commission awarded a total of forty-one licenses, 11 of which were obtained by four small businesses.⁷⁵ To ensure meaningful participation by small business entities in

⁶⁷ See *Trends in Telephone Service*, Industry Analysis Division, Wireline Competition Bureau, Table 5.3 (Number of Telecommunications Service Providers that are Small Businesses) (May 2002).

⁶⁸ 13 C.F.R. § 121.201, NAICS code 517211.

⁶⁹ See Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7850-7852 ¶¶ 57-60 (1996); see also 47 C.F.R. § 24.720(b).

⁷⁰ See Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7852 ¶ 60.

⁷¹ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

⁷² FCC News, "Broadband PCS, D, E and F Block Auction Closes," No. 71744 (rel. January 14, 1997).

⁷³ See "C, D, E, and F Block Broadband PCS Auction Closes," *Public Notice*, 14 FCC Rcd 6688 (WTB 1999).

⁷⁴ Implementation of Section 309(j) of the Communications Act – Competitive Bidding Narrowband PCS, *Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 10 FCC Rcd 175, 196 ¶ 46 (1994).

⁷⁵ See "Announcing the High Bidders in the Auction of ten Nationwide Narrowband PCS Licenses, Winning Bids Total \$617,006,674," *Public Notice*, PNWL 94-004 (rel. Aug. 2, 1994); "Announcing the High (continued....)"

future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*.⁷⁶ A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million.⁷⁷ A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million.⁷⁸ The SBA has approved these small business size standards.⁷⁹ A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (MTA and nationwide) licenses.⁸⁰ Three of these claimed status as a small or very small entity and won 311 licenses.

26. **Specialized Mobile Radio (SMR).** The Commission awards "small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years.⁸¹ The Commission awards "very small entity" bidding credits to firms that had revenues of no more than \$3 million in each of the three previous calendar years.⁸² The SBA has approved these small business size standards for the 900 MHz Service.⁸³ The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.⁸⁴ A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.⁸⁵

Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total \$490,901,787," *Public Notice*, PNWL 94-27 (rel. Nov. 9, 1994).

⁷⁶ Amendment of the Commission's Rules to Establish New Personal Communications Services, *Narrowband PCS, Second Report and Order and Second Further Notice of Proposed Rule Making*, 15 FCC Rcd 10456, 10476 ¶ 40 (2000).

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

⁸⁰ See "Narrowband PCS Auction Closes," *Public Notice*, 16 FCC Rcd 18663 (WTB 2001).

⁸¹ 47 C.F.R. § 90.814(b)(1).

⁸² *Id.*

⁸³ See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999. We note that, although a request was also sent to the SBA requesting approval for the small business size standard for 800 MHz, approval is still pending.

⁸⁴ See "Correction to Public Notice DA 96-586 'FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,'" *Public Notice*, 18 FCC Rcd 18367 (WTB 1996).

⁸⁵ See "Multi-Radio Service Auction Closes," *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

27. The auction of the 1,050 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed "small business" status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

28. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is established by the SBA.

29. **Private Land Mobile Radio (PLMR).** PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we could use the definition for "Cellular and Other Wireless Telecommunications." This definition provides that a small entity is any such entity employing no more than 1,500 persons.⁸⁶ The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. Moreover, because PLMR licensees generally are not in the business of providing cellular or other wireless telecommunications services but instead use the licensed facilities in support of other business activities, we are not certain that the Cellular and Other Wireless Telecommunications category is appropriate for determining how many PLMR licensees are small entities for this analysis. Rather, it may be more appropriate to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.⁸⁷

30. The Commission's 1994 Annual Report on PLMRs⁸⁸ indicates that at the end of fiscal year 1994, there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the revised rules in this context could potentially impact every small business in the United States.

31. **Fixed Microwave Services.** Fixed microwave services include common carrier,⁸⁹ private-operational fixed,⁹⁰ and broadcast auxiliary radio services.⁹¹ Currently, there are approximately 22,015

⁸⁶ See 13 C.F.R. § 121.201, NAICS code 517212.

⁸⁷ See generally 13 C.F.R. § 121.201.

⁸⁸ Federal Communications Commission, 60th Annual Report, Fiscal Year 1994, at ¶ 116.

⁸⁹ 47 C.F.R. §§ 101 *et seq.* (formerly, part 21 of the Commission's Rules).

⁹⁰ Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. See generally 47 C.F.R. parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this FRFA, we will use the SBA's definition applicable to "Cellular and Other Wireless Telecommunications" companies – that is, an entity with no more than 1,500 persons.⁹² The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are 22,015 or fewer small common carrier fixed licensees and 61,670 or fewer small private operational-fixed licensees and small broadcast auxiliary radio licensees in the microwave services that may be affected by the rules and policies adopted herein. The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

32. Wireless Communications Services. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of \$15 million for each of the three preceding years.⁹³ The SBA has approved these definitions.⁹⁴ The FCC auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity. An auction for one license in the 1670-1674 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

33. 39 GHz Service. The Commission defines "small entity" for 39 GHz licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.⁹⁵ "Very small business" is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.⁹⁶ The SBA has approved these definitions.⁹⁷ The auction of the 2,173 39 GHz licenses began on April 12, 2000, and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses.

⁹¹ Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's Rules. See 47 C.F.R. Part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

⁹² 13 C.F.R. § 121.201, NAICS code 517212.

⁹³ Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS), *Report and Order*, 12 FCC Rcd 10785, 10879 ¶ 194 (1997).

⁹⁴ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

⁹⁵ See Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Band, *Report and Order*, 12 FCC Rcd 18600 (1997).

⁹⁶ *Id.*

⁹⁷ See Letter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Hector Barreto, Administrator, Small Business Administration, dated January 18, 2002.

34. **Local Multipoint Distribution Service.** An auction of the 986 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined “small entity” for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.⁹⁸ An additional classification for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.⁹⁹ These regulations defining “small entity” in the context of LMDS auctions have been approved by the SBA.¹⁰⁰ There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small business winning bidders that won 119 licenses.

35. **218-219 MHz Service.** The first auction of 218-219 MHz (previously referred to as the Interactive and Video Data Service or IVDS) spectrum resulted in 178 entities winning licenses for 594 Metropolitan Statistical Areas (MSAs).¹⁰¹ Of the 594 licenses, 567 were won by 167 entities qualifying as a small business. For that auction, we defined a small business as an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years.¹⁰² In the *218-219 MHz Report and Order and Memorandum Opinion and Order*, we defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not exceeding \$15 million for the preceding three years.¹⁰³ A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not exceeding \$3 million for the preceding three years.¹⁰⁴ The SBA has approved of these definitions.¹⁰⁵ At this time, we cannot estimate the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218-219 MHz spectrum. Given the success of small businesses in the previous auction, and the prevalence of small businesses in the subscription television services and

⁹⁸ See Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission’s Rules to Redesignate the 27.5-29.5 GHz Frequency Band, Reallocate the 29.5-30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making*, 12 FCC Rcd 12545, 12689-90 ¶ 348 (1997).

⁹⁹ *Id.*

¹⁰⁰ See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998.

¹⁰¹ See “Interactive Video and Data Service (IVDS) Applications Accepted for Filing,” *Public Notice*, 9 FCC Rcd 6227 (1994).

¹⁰² Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Fourth Report and Order*, 9 FCC Rcd 2330 (1994).

¹⁰³ Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, *Report and Order and Memorandum Opinion and Order*, 15 FCC Rcd 1497 (1999).

¹⁰⁴ *Id.*

¹⁰⁵ See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998.

message communications industries, we assume for purposes of this FRFA that in future auctions, many, and perhaps all, of the licenses may be awarded to small businesses.

36. **Location and Monitoring Service (LMS).** Multilateration LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$15 million.¹⁰⁶ A "very small business" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$3 million.¹⁰⁷ These definitions have been approved by the SBA.¹⁰⁸ An auction for LMS licenses commenced on February 23, 1999, and closed on March 5, 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses. We cannot accurately predict the number of remaining licenses that could be awarded to small entities in future LMS auctions.

37. **Rural Radiotelephone Service.** We use the SBA definition applicable to cellular and other wireless telecommunication companies, *i.e.*, an entity employing no more than 1,500 persons.¹⁰⁹ There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

38. **Air-Ground Radiotelephone Service.** We use the SBA definition applicable to cellular and other wireless telecommunication companies, *i.e.*, an entity employing no more than 1,500 persons.¹¹⁰ There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

39. **Offshore Radiotelephone Service.** This service operates on several ultra high frequency (UHF) TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. We use the SBA definition applicable to cellular and other wireless telecommunication companies, *i.e.*, an entity employing no more than 1,500 persons.¹¹¹ The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition. The Commission assumes, for purposes of this FRFA, that all of the 55 licensees are small entities, as that term is defined by the SBA.

40. **Multiple Address Systems (MAS).** Entities using MAS spectrum, in general, fall into two categories: (1) those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, the Commission defines "small entity" for MAS licenses

¹⁰⁶ Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Second Report and Order*, 13 FCC Rcd 15182, 15192 ¶ 20 (1998); *see also* 47 C.F.R. § 90.1103.

¹⁰⁷ Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Second Report and Order*, 13 FCC Rcd at 15192 ¶ 20; *see also* 47 C.F.R. § 90.1103.

¹⁰⁸ *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated February 22, 1999.

¹⁰⁹ 13 C.F.R. § 121.201, NAICS code 517212.

¹¹⁰ *Id.*

¹¹¹ *Id.*

as an entity that has average gross revenues of less than \$15 million in the three previous calendar years.¹¹² "Very small business" is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$3 million for the preceding three calendar years.¹¹³ The SBA has approved of these definitions.¹¹⁴ The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission's licensing database indicates that, as of January 20, 1999, there were a total of 8,670 MAS station authorizations. Of these, 260 authorizations were associated with common carrier service. In addition, an auction for 5,104 MAS licenses in 176 EAs began November 14, 2001, and closed on November 27, 2001.¹¹⁵ Seven winning bidders claimed status as small or very small businesses and won 611 licenses.

41. With respect to the second category, which consists of entities that use, or seek to use, MAS spectrum to accommodate their own internal communications needs, we note that MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the definitions developed by the SBA would be more appropriate. The applicable definition of small entity in this instance appears to be the "Cellular and Other Wireless Telecommunications" definition under the SBA rules. This definition provides that a small entity is any entity employing no more than 1,500 persons.¹¹⁶ The Commission's licensing database indicates that, as of January 20, 1999, of the 8,670 total MAS station authorizations, 8,410 authorizations were for private radio service, and of these, 1,433 were for private land mobile radio service.

42. **Incumbent 24 GHz Licensees.** The rules that we adopt could affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The Commission did not develop a definition of small entities applicable to existing licensees in the 24 GHz band. Therefore, the applicable definition of small entity is the definition under the SBA rules for "Cellular and Other Wireless Telecommunications." This definition provides that a small entity is any entity employing no more than 1,500 persons.¹¹⁷ We believe that there

¹¹² See Amendment of the Commission's Rules Regarding Multiple Address Systems, *Report and Order*, 15 FCC Rcd 11956, 12008 ¶ 123 (2000).

¹¹³ *Id.*

¹¹⁴ See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated June 4, 1999.

¹¹⁵ See "Multiple Address Systems Spectrum Auction Closes," *Public Notice*, 16 FCC Rcd 21011 (2001).

¹¹⁶ See 13 C.F.R. § 121.201, NAICS code 517212.

¹¹⁷ See *id.* According to Census Bureau data for 1997, in this category, there were a total of 977 firms that operated for the entire year. U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 513322 (October 2000). Of this total, 965 firms had employment of 999 or fewer employees, and an additional twelve firms had employment of 1,000 employees or more. *Id.* The census data do not provide a more precise estimate of the number of firms that have 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent¹¹⁸ and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

43. **Future 24 GHz Licensees.** With respect to new applicants in the 24 GHz band, we have defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding \$15 million.¹¹⁹ "Very small business" in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years.¹²⁰ The SBA has approved these definitions.¹²¹ The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held.

D. Description of Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

44. The projected reporting, recordkeeping, and other compliance requirements resulting from this proceeding will apply to all entities in the same manner. We believe that equitably applying the same rules to all entities helps to promote fairness in the spectrum leasing process, and we do not believe that the costs and/or administrative burdens associated with the new rules will disproportionately affect small entities. Indeed, the rules adopted today should benefit small entities by giving them more information, more flexibility, and more options for acquiring valuable spectrum.

45. Parties seeking to implement spectrum leasing arrangements must file an electronic application on ULS, in accordance with the procedures discussed in the Report and Order. While we will not routinely require the lease applicants to file a copy of the lease agreement with the application, parties must maintain copies of the lease and the filed application, and must make them available for inspection by the Commission or its representatives.

46. For spectrum manager leasing arrangements, the licensee is responsible for filing a notification with the Commission regarding the nature of the arrangement. The licensee remains primarily responsible to the Commission for ensuring that the spectrum lessee operates consistent with the applicable interference-related and other service rules. (The lessee remains subject to all of the interference-related service rules and most of the non-interference-related rules, including the eligibility and qualification rules and use restrictions, applicable to the licensee.) The licensee also submits any filings to the Commission required in connection with the lessee's operations under the spectrum manager leasing arrangement. The Commission retains the authority, in appropriate situations, to proceed directly against a spectrum lessee in order to halt unacceptable interference.

¹¹⁸ Teligent acquired the Digital Electronic Message Service (DEMS) licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

¹¹⁹ Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules To License Fixed Services at 24 GHz, *Report and Order*, 15 FCC Rcd 16934, 16967 ¶ 77 (2000) (24 GHz *Report and Order*); see also 47 C.F.R. § 101.538(a)(2).

¹²⁰ 24 GHz *Report and Order*, 15 FCC Rcd at 16967 ¶ 77; see also 47 C.F.R. § 101.538(a)(1).

¹²¹ See Letter to Margaret Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Gary Jackson, Assistant Administrator, Small Business Administration, dated July 28, 2000.

47. Following Commission approval of *de facto* transfer leasing applications, spectrum lessees assume primary responsibility for compliance with Commission rules and policies in the geographic areas and on the frequencies covered by the lease. As under spectrum manager leasing arrangements, lessees are subject to all of the interference-related service rules and most of the non-interference-related rules, including the eligibility and qualification rules, though lessees in short-term leasing arrangements have additional flexibility with regard to certain use restrictions otherwise applicable to licensees in particular services. Lessees become responsible for making any applicable filings, including ULS applications and notifications, submission of any materials required to support a required Environmental Assessment, any reports required by our rules and applicable to the lessee, information necessary to facilitate international or IRAC coordination, or any other submissions that would be applicable to the lessee's operations if it instead were a full licensee. In addition, lessees are obligated to maintain accurate information on file pursuant to section 1.65 of our rules.¹²² To facilitate our recordkeeping as well as access to information necessary to undertake any necessary enforcement inquiries or actions, we will assign a specific designator to the approved lease operations, which will reflect its association with the licensee's underlying call sign.

48. For both short-term and long-term *de facto* transfer leasing, the licensee retains certain residual responsibilities to the Commission for operations on spectrum encompassed within its license. We would subject the licensee to appropriate enforcement action if, for example, a licensee engaged in a sham leasing arrangement with an affiliate in an effort to enable that affiliate to undertake activities that might otherwise put the license at risk if undertaken directly by the licensee. We will also hold the licensee responsible for ongoing violations or other egregious behavior on the part of the spectrum lessee about which the licensee has knowledge.

49. Our adoption of streamlined processing for transfer of control and license assignment applications requires all entities to file an application with us in order to obtain Commission consent. This requirement currently applies to all entities, regardless of size, and will continue to do so. In connection with implementing this streamlined review process, the required application forms may be simplified or streamlined, thus reducing the burdens on small businesses and all other potential applicants, regardless of size.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

50. The RFA requires an agency to describe any significant alternatives that it considered in reaching its final decision, which may include the following four alternatives, among others: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.¹²³

51. Establishment of policies, rules, and streamlined procedures to facilitate the ability of parties to enter into a wide variety of flexible leasing arrangements involving our Wireless Radio Services. See Report and Order, para. 39. We do not anticipate any adverse impact on small entities as a result of taking steps to facilitate spectrum leasing in many of our Wireless Radio Services and reducing the regulatory burdens associated with entering into such arrangements. Indeed, facilitating spectrum leasing arrangements will permit spectrum lessees to obtain access to and use spectrum in a manner best

¹²² 47 C.F.R. § 1.65. This section requires applicants to maintain the accuracy and completeness of information on file with the Commission.

¹²³ 5 U.S.C. §§ 603(c)(1)-(4).

suited to meeting the particular needs and business plans of both licensees and lessees. By affording existing licensees additional flexibility to enter into leasing arrangements with third parties that can put spectrum into use, we will help to alleviate spectrum constraints and provide new opportunities to put underutilized or fallow spectrum to efficient use. We believe that the rules and policies we adopt will benefit all parties, including small entities, that would like to lease their spectrum to others or obtain additional spectrum for their own use. Small entities, like all covered entities, will be governed by reduced filing requirements and reduced regulatory uncertainty.

52. Replacement of the *Intermountain Microwave* standard with a new *de facto* control standard for determining whether an unauthorized transfer of control has occurred in the context of spectrum leasing. See Report and Order, paras. 51-65. We anticipate no adverse impact on small entities as a result of adopting a new standard for assessing *de facto* control in the context of spectrum leasing. We believe that this revised *de facto* control standard achieves a better balance between the statutory requirements of Section 310(d) of the Communications Act of 1934, as amended,¹²⁴ and the realities of today's wireless marketplace and advancing technologies. By adopting this revised standard, we can permit licensees and spectrum lessees to enter into spectrum manager leasing arrangements without having to first obtain prior Commission approval. To the extent that the spectrum manager leasing arrangement can be tailored to meet the needs of a licensee and a spectrum lessee, this option will provide small entities as well as all other entities with an opportunity to enter into spectrum leasing arrangements for which only a notification to the Commission is required.

53. Applicability of spectrum leasing rules to many, but not all, Wireless Radio Services. See Report and Order, para. 85. The Report and Order extends flexible spectrum leasing opportunities to a wide array of our Wireless Radio Services. As indicated in Section A, *supra*, these new policies will benefit a number of entities that are licensees in these services as well as entities that might seek to lease spectrum from license holders, specifically including small entities. Because of the potential benefits for this wide-ranging group of entities, we have not designed particular benefits for small entities, which might provide this latter category with unwarranted competitive advantages. With regard to our decision to exclude certain Wireless Radio Services and certain categories of Wireless Radio Service licensees, including services involving operation on shared frequencies, from the scope of the new rules adopted in the Report and Order, we acknowledge that certain small (and large) entities that might benefit from entering into spectrum leasing agreements will not be allowed to take advantage of our new rules at this time. While we decide not to extend our spectrum leasing policies and rules to licensees in the excluded services in the Report and Order, we note that in the Further Notice, we consider whether to extend our leasing policies to these and other additional services. An alternative to this approach would have been to allow other or all wireless licensees to enter into spectrum leasing agreements at this time. Many of these services were excluded by the explicit provisions of the *NPRM* from consideration, and thus we have little record to support extending spectrum leasing rules to these services at this time. Rather, the Further Notice issued in conjunction with the Report and Order seeks additional comment on the appropriateness of extending the spectrum leasing rules adopted in the Report and Order to other categories of Wireless Radio Service licensees.

54. General applicability of license service rules and policies to spectrum lessees. See Report and Order, para. 91. The Report and Order determines that, as a general matter, the service rules and policies governing a licensee will also be applied to a spectrum lessee. We acknowledge that this approach may cause administrative compliance burdens and costs for small entities that choose to become spectrum lessees. These same costs and burdens, however, are imposed on all entities seeking to become spectrum lessees, just as all licensees wishing to enter into spectrum leasing arrangements must comply with the applicable requirements governing the form of arrangement. An alternative to the approach

¹²⁴ 47 U.S.C. § 310(d).